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No. 1808

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

ANDREW ANDERSON, A. ANDERSON COMPANY
(a Corporation), JOHN J. BEATON, ANGUS
BEATON, EDWARD CARLSEN, HARRY F.
CHASE, MALCOLM P. CHASE, L. CHASE,
SAMUEL B. CHASE, MARY L. CHASE, WM.
B. CHASE, JR., DOROTHY M. CHASE, FRED.
J. CHASE, GEORGE BOOLE (a Corporation),
MRS. E. G. BOOLE, HENRIETTA W. HOBBS,
E. W. HOBBS, CLARENCE W. HOBBS,
EDWARD HENRIX, MARGARET J. WALL,
MARION B. WALDRON and HENRY NELSON,
Libelants,

Appellants,

vs.

J. J. MOORE & COMPANY (a Corporation),

Appellee.

APOSTLES ON APPEAL.

Upon Appeal from the United States District Court for
the Northern District of California.

FILED
FEB 8 - 1910

Handwritten text, possibly a signature or name, written in cursive on aged paper. The text is extremely faint and difficult to decipher, but appears to consist of several lines of writing.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Designation and Stipulation Under Rule 23.]

*United States Circuit Court of Appeals for the
Ninth Circuit.*

IN ADMIRALTY.—No. 1808.

ANDREW ANDERSON et al.,

Libellants and Appellants,

vs.

J. J. MOORE & CO. (a Corporation),

Respondent and Appellee.

DESIGNATION OF PARTS OF CERTIFIED
RECORD TO BE PRINTED.

The appellants in the above appeal intend to rely on the hearing thereof upon the whole of the errors shown by their assignment of errors therein, and designate the following parts of the certified record as the parts they think necessary for the consideration of such errors, to wit:

The whole of such certified record excepting only pages 1, 2, 3, 4, 18, 20, 21, 22 and 113 thereof.

The whole of the exhibits excepting only page 2 of Libellants' Exhibit "H."

Omit printing the caption of each paper excepting only the first and insert in the place of such caption "Title of Court and Cause."

H. W. HUTTON,

Proctor for Appellants.

It is hereby stipulated and agreed that the certified record in the above appeal was filed in time and that

the clerk of said Court need not print the orders extending the time in which said record should be filed.

Dated January 10th, 1910.

H. W. HUTTON,

Proctor for Appellants.

WILLIAM DENMAN,

Proctor for Appellee.

[Endorsed]: No. 1808. In the United States Circuit Court of Appeals for the Ninth Circuit. In Admiralty. Andrew Anderson et al., Libellants, and Appellants, vs. J. J. Moore & Co., Respondents and Appellee. Designation of Parts of Record to be Printed. Copy received this — day of January, 1910. ———, Proctor for Appellee. Filed Jan. 12, 1910. F. D. Monckton, Clerk. H. W. Hutton, 527-529 Pacific Building, San Francisco, Cal., Proctor for Appellants.

*In the District Court of the United States, in and for
the Northern District of California.*

IN ADMIRALTY.

ANDREW ANDERSON, A. ANDERSON CO. (a Corporation), JOHN J. BEATON, ANGUS BEATON, EDWARD CARLSEN, HARRY F. CHASE, MALCOLM P. CHASE, L. CHASE, SAMUEL B. CHASE, MARY L. CHASE, WM. B. CHASE, Junior, DORTHY M. CHASE, FRED J. CHASE, GEORGE BOOLE (a Corporation), Mrs. E. G. BOOLE, HENRIETTA W. HOBBS, E. W. HOBBS, CLARENCE W. HOBBS, EDWARD HENRIX, MARGARET J. WALL, MARION B. WALDRON, and HENRY NELSON,

Libellants,

vs.

J. J. MOORE & CO. (a Corporation),

Defendant.

Libel.

To the Honorable J. J. DE HAVEN, Judge of said Court:

The libel of the above-named libellants, of said district, ship-owners, against the above-named defendant, also of said district, merchant, to wit, a mercantile corporation in a cause of extended freight, to wit, demurrage, alleges as follows:

I.

That on all of the dates and times herein men-

tioned libellants A. Anderson Co., George Boole, and the defendant were and now are corporations organized and existing under and by virtue of the laws of the State of California, each thereof having its office and principal place of business in the City and County of San Francisco, said State.

II.

That on all of the dates and times herein mentioned the libellants above named were and now are the owners and operators of the American ship "Columbia," which said vessel is and was of 1327 net register tonnage.

III.

That on all of said dates and times libellant Henry Nelson was and now is the managing owner of said vessel, and as such managing owner was and now is the agent of all the other owners thereof in respect to the operation of said vessel.

IV.

That on the 26th day of June, 1907, at the City and County of San Francisco, in the State of California, the said defendant herein and the said Henry Nelson made, executed and delivered each to the other a charter-party in writing, wherein and whereby the said defendant chartered the said ship "Columbia" to proceed from San Pedro, in the State of California, where the said vessel then was, to Newcastle, Australia, there to load coal and return to San Francisco, in the State of California, to discharge the said coal.

V.

That the said charter-party was signed by the said

Henry Nelson in and by his own name, but in executing the same he did so as agent of all of the other libellants herein, and for their use and benefit, as well as for his own use and benefit, and also as managing owner of the said vessel for the use and benefit of all of her owners.

VI.

That pursuant to said charter-party and under the same the said vessel left the said San Pedro for said Newcastle where she arrived in due time, and there loaded a cargo of coal under said charter-party and for defendant's account and returned therefrom to California, and arrived in the port of San Francisco with all of said cargo of coal on board, the same consisting of two thousand two hundred and twenty tons, of 2240 pounds each.

V.

That contained within said charter-party was a stipulation and condition in the following terms in substance, to wit: That the said cargo should be discharged from said vessel in such customary berth as consignees shall direct, ship always being afloat and at the average rate of not less than one hundred and fifty tons per day on weather working days, Sundays and holidays excepted, to commence when ship was ready to discharge, and notice thereof given to said defendant in writing, and that if said vessel was detained over such days, demurrage was to be paid to libellants by said charterer at the rate of three pence English money per registered ton of said vessel per day.

VI.

That notice of the readiness of said vessel to discharge was given to the said defendant by libellants on the 15th day of January, 1908, at twelve o'clock noon, the said vessel then being, and ever since has been, ready to discharge, but no berth has been provided for that purpose by any one, nor can the libellants find any place where to discharge said vessel, and no cargo has yet been discharged from said vessel.

VII.

That the following were working days and days upon which coal was actually and generally discharged from vessels laden therewith in the port of said San Francisco, since the said notice was given, to wit: January the 15th, the 17th, the 20th for 2/3rds of said day; the 21st, the 22d, the 23d for one-half of that day; the 24th, the 25th for one-half of that day; the 27th, the 29th for one-half of that day; the 30th, the 31st, and on the following days in the month of February, 1908, the 3d, the 4th, for one-half of that day; the 5th, the 6th, and the 7th, and the days in which such cargo should have been completely discharged under said charter expired on the 7th day of February, 1908, at the hour of ten o'clock in the forenoon, a working day in the port of said San Francisco being from 7 A. M. to 12 noon, and from 1 P. M. to 5 P. M.

VIII.

That by reason of the premises said defendant has become indebted to the libellants in the sum of \$1,008.26 for the detention of said vessel, from and

including the 7th day of February, 1908, up to and including the 19th day of February, 1908, the said detention commencing on the said 7th day of February, 1908, at the hour of ten o'clock in the forenoon, and it was further stipulated in said charter-party that exchange should be computed at \$4.80 to one pound sterling money.

IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore, libellants pray that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said defendant, and that it may therein be cited to appear and answer under oath all and singular the premises aforesaid, and that this Honorable Court will be pleased to decree the payment of the said extended freight aforesaid with costs and interest, and that libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

[Seal]

HENRY NELSON,

For Self and Co., Libelants.

Subscribed and sworn to before me this 20th day of Febry., 1908.

JOHN FOUGA,

Deputy Clerk U. S. District Court, Northern District of California.

H. W. HUTTON,

Proctor for Libelants.

[Endorsed]: Filed Feb. 20, 1908. Jas. P. Brown, Clerk. By John Fouga, Deputy Clerk.

[Notice of Motion for Leave to Amend Libel, to File a Supplemental Libel, etc.]

[Title of Court and Cause.]

The defendant above named and its proctor will please take notice that libellants will move the above court, at the courtroom thereof, United States Post-office Building, at the corner of Seventh and Mission Street, in the City and County of San Francisco, State of California, on Saturday, the 24th day of October, A. D. 1908, at the opening of said court, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order of said court allowing the libellants to amend their libel on file herein by inserting therein, the matter attached hereto marked exhibit "A." And also for an order of said Court allowing libellants to file a supplemental libel, a copy of which proposed supplemental libel is attached hereto marked exhibit "B." Each of said motions will be based upon the grounds that in order to allow the libellants to present their whole case to the court, it is necessary to amend their libel, and to file said supplemental libel and on the hearing of said motions, said libellants will read this notice of motion, and the papers and files herein.

You are further notified that in the event the Court grants said motions or either thereof, said libellants will ask leave to file the said amendments

and supplemental libel, with the signature and verification of but one of said libellants.

Yours etc.,

H. W. HUTTON,
Proctor for Libellants.

EXHIBIT "A."

[**Proposed Amendments to the Libel.**]

[Title of Court and Cause.]

Now comes the libellants above named, and by leave of the Court first had and obtained, file the following amendments to their libel on file herein, and amend said libel in the following particulars:

I.

By inserting at the close of paragraph "VI" of said charter-party the following matters.

VIa.

That contained within said charter-party was a stipulation that the captain of said vessel should sign bills of lading for the cargo so taken on board without prejudice to said charter-party, but at no less than chartered rates, and upon the lading of said cargo on board as aforesaid there was presented to H. Larson, who was then and there the master of said vessel "Columbia," by Messrs. Davis & Fehon, Ltd., who as libellants are informed and believe and so aver were then and there the agents of said defendant J. J. Moore & Co., for that purpose, three certain bills of lading in like *tenure* with each other for the signature of the said master, and he thereupon, as master of said vessel, signed the whole

thereof, the said bills of lading being in the words and figures following, to wit:

<p>“DAVIS & FEHON, Limited, Merchants and Ship- ping Agents. - 60 Margaret St., Syd- ney, and at 375 Flinders Lane Mel- bourne.</p>	<p>SHIPPED in good order and condition by DAVIS & FEHON, LTD., on board the good ship or vessel called the “Columbia,” whereof H. Larson is master for the present voyage, and now riding at anchor in the harbor at New- castle and bound for San Fran- cisco.</p>
---	---

Two thousand two hundred and
 twenty tons of coal.

Clause Paramount.

<p>2220 tons of Coal. (ten) tons coal on board for Ship's use, exclusive of cargo.</p>	<p>This Bill of Lading is to be read and construed as if every clause therein contained which is ren- dered illegal or null and void by the Sea Carriage of Goods Act 1904 had never been inserted therein or had been cancelled and eliminated there- from prior to the execution thereof, and is issued subject to all the terms and provisions of and to all the exemptions from liability contained in such act, being marked and numbered as in the margin, and are to be delivered in the like good order and condi- tion at the aforesaid Port of San Francisco (The Act of God, the King's Enemies, fire, and all and every other dangers and accidents of the Seas, Rivers and Navigation, of whatever nature and kind, soever excepted), unto order or to their assigns, he or they</p>
--	---

paying Freight for the said Goods and all other clauses and conditions as per Charter-party.

Average according to York-Antwerp Rules, 1890. In witness whereof the Master or Purser of the said ship or vessel hath affirmed to three Bills of Lading, all of this tenor and date, the one of which three Bills being accomplished, the others to stand void.

Weight and contents unknown.

Dated in Newcastle, 18th October, 1907.

H. LARSON.

That as libellants are informed and believe, and so aver, the said Davies & Fehon, Limited, wrote their name upon the back of one of said bills of lading, and delivered the same with their name so written upon the back thereof, prior to the arrival of said vessel "Columbia" in the port of San Francisco, on her return voyage to San Francisco. And upon their information and belief, libellants further allege, that the defendant herein was the consignee of said cargo of coal at said port of San Francisco.

Libellants further allege that the defendant herein paid the freight money for the said cargo of coal, and they received all discharging orders for said vessel at said San Francisco from said defendant.

H. W. HUTTON,
Proctor for Libellants.

[Proposed Supplemental Libel.]

[Title of Court and Cause.]

To the Honorable J. J. DE HAVEN, Judge of the
Above-named Court.

The supplemental libel of the libellants in the above cause against J. J. Moore & Co., a Corporation, in a cause of demurrage (extended freight) respectfully shows as follows:

I.

Libellants especially refer to and make a part hereof all the allegations of their libel and all the amendments thereto.

II.

Libellants further allege, that after the filing of their libel herein, the said ship "Columbia" was further detained by the said defendant, with the said cargo of coal on board, and the said defendant failed to provide any place of discharge of said coal until on or about the 12th day of March, 1908, and as soon as a place for the discharge of said coal was provided for such discharge by the said defendant, the said coal was thereupon, and as quickly as possible, discharged therefrom, and the whole of said coal was finally discharged under the orders of said defendant, at twelve o'clock noon of the 19th day of March, 1908, at which time she had been detained by said defendant over and above the lay days provided for in said charter-party, a total of forty-one days.

III.

That by reason of the premises libellants are

entitled to have and recover of the defendant forty-one days' demurrage for said vessel at the rate of seventy-nine and 62/100 (\$79.62) dollars per day, or a total of three thousand two hundred and sixty-four and 42/100 (\$3264.42) dollars, with interest.

Wherefore libellants pray that defendant above named may be required to *answer oath* all and singular the premises aforesaid, and that libellants may have judgment against the defendant for the sum of three thousand two hundred and sixty-four and 42/100 (\$3,264.42) dollars and interest and costs.

Libellants further pray for general relief.

H. W. HUTTON,

Proctor for Libellants.

Copy received this 20th day of October, 1908.

WILLIAM DENMAN,

Proctor for Defendant.

[Endorsed]: Filed Oct. 22, 1908. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk.

[Order Granting Motion to Amend the Libel.]

At a stated term of the District Court of the United States of America, for the Northern District of California, held at the Courtroom thereof, in the City and County of San Francisco, on Saturday, the 24th day of October, in the year of our Lord one thousand nine hundred and eight. Present: The Honorable JOHN J. DE HAVEN, Judge.

No. 13,767.

ANDREW ANDERSON et al.

vs.

J. J. MOORE & CO.

On motion of H. W. Hutton, Esqr., proctor for libelants, by the Court ordered that the motion to amend the libel herein be, and the same is hereby granted in accordance with the stipulation on file herein.

[Stipulation Concerning the Amendment to the Libel and the Supplemental Libel.]

[Title of Court and Cause.]

It is hereby stipulated by and between the parties hereto:

I.

That the amendment to the libel heretofore filed herein, proposing to insert paragraph 6a after paragraph 6 of said libel, *may filed* herein without verification, and that all the allegations thereof are ad-

mitted, save the allegation that Messrs. Davies & Fehon, Limited, were at any of the times in said amendment mentioned agents of defendant J. J. Moore & Co.

II.

That the proposed supplemental libel of libelants may be filed herein without verification, and that all the allegations therein contained shall be deemed at the trial of the said cause to have been duly denied and placed in issue by answer.

H. W. HUTTON,

Proctor for Libelants.

WILLIAM DENMAN,

Attorney for Defendant.

[Endorsed]: Filed October 24, 1908. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

[Title of Court and Cause.]

Exceptions to Libel.

Now comes the respondent, J. J. Moore & Company, and excepts to the libel of libelants on file herein on the ground that the said libel states a cause of action arising from a contract in writing, and that the said libel fails to set forth the said contract in writing.

Wherefore, respondent prays that libelants be compelled to amend their libel and set forth the said contract, or that the respondent be hence dismissed with its costs of suit herein.

WILLIAM DENMAN,

Proctor for Respondent.

Service of the above is hereby admitted this 9th day of March, 1908.

H. W. HUTTON,
Proctor for Libelant.

[Endorsed]: Filed Mch. 10, 1908. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk.

[Order Overruling the Exceptions to the Libel, etc.]

At a stated term of the District Court of the United States of America, for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 29th day of May ———, in the year of our Lord one thousand nine hundred and eight. Present: The Honorable JOHN J. DE HAVEN, Judge.

No. 13,767.

HENRY NELSON, et al.

vs.

J. J. MOORE & CO.

The exceptions to the Libel herein, having been heretofore submitted to the Court for decision, now after due consideration had thereon, by the Court ordered that said exceptions be. and the same are hereby overruled, and the respondent be, and it is hereby allowed ten days in which to file its answer.

[Title of Court and Cause.]

Answer.

To the Honorable JOHN J. DE HAVEN, Judge of
the United States District Court, Northern
District of California.

Now comes the respondent, and answering the libel
of libelants on file herein, admits and denies as fol-
lows:

I.

Answering Article 11 of said Libel, respondent
alleges that it has no information or belief on the
subject sufficient to enable it to answer the same,
and basing its denial on that ground, denies *that all*
of the dates and times, or any of them, mentioned in
the said libel, libelants were the owners and opera-
tors, or owners or operators, of the American ship
“Columbia,” or that the said vessel was of Thirteen
Hundred and Twenty-seven (1327) net register ton-
nage; and on the said ground denies that on all of
said dates, or any of them, libelant Henry Nelson
was the managing owner of the said vessel, or that
he was the agent of all or any of the other owners
therein in respect to the operation of the said vessel,
or at all.

II.

Answering Articles IV, V, VI and VII (errone-
ously marked Article V) of said libel, respondent
denies that it entered into any contract chartering
the said vessel the “Columbia,” other than that
certain written charter-party, *excluded* and delivered

mutually by the libelants and the defendant in duplicate copies, a copy whereof is hereunto annexed, marked Exhibit "A", and hereby made a part hereof. That by the terms of the said contract it was provided as follows: The said vessel "to be discharged as customary in such customary berth or place as consigned shall direct, at the average rate of not less than 150 tons per weather working days, Sundays and holidays excepted, to commence when the ship is ready to discharge and notice thereof has been given by the captain in writing. For detention over and above said laying days, demurrage to be at 3rd per register ton "per day." Respondent denies that the said vessel was on the 15th day of January, 1908, at 12:00 o'clock, noon, or any time prior to the commencement of this action, ready to discharge the said vessel, and denies that no berth has been provided for that purpose by anyone; and in that behalf alleges that on or about the 15th day of January, 1908, respondent did notify libelant, and did direct the discharge of the said vessel at the dock of the Western Fuel Company, a customary berth or place inside the Golden Gate and in the said port for the discharge of such cargo; that it is the *custom method* of discharging in the port of San Francisco and the custom of the said port, that where a vessel has been directed by the consignee to go to a dock provided for in the charter party, and the said vessel is unable to reach the said dock by reason of the presence at the said dock, filling the same, of vessels which have been ready to discharge prior to the vessel in question, said vessel shall await its turn to

discharge at the said dock, until the vessels designated for discharge, or intended for discharge, at the said dock, which have been ready to discharge prior to the said vessel, shall have been discharged thereat. That the said Western Fuel dock was a safe wharf or place in the said city and county at which said vessel could always lie afloat.

III.

Answer Article X of the said libel (erroneously marked Article VIII) respondent denies that by reason of the premises, or at all, it became indebted to libelants in the sum of One Thousand Eight and 26/100 Dollars (\$1,008.26), or in any sum whatsoever, for the detention of the said vessel for any time whatsoever.

IV.

Answering Article XI (erroneously marked Article IX) of the said libel, respondent admits that whatever of the said libel be true is within the admiralty and maritime jurisdiction of the United States and of this Honorable Court, but denies that the premises therein contained are true otherwise than as admitted by this answer.

Wherefore, respondent prays that libelants take nothing by reason of this action, and that respondent have judgment for its costs of suit incurred herein.

WILLIAM DENMAN,
Proctor for Respondent.

State of California,
City and County of San Francisco,—ss.

J. J. Moore, being first duly sworn, deposes and says: That he is an officer of the respondent corporation, namely, President thereof; that he has read the foregoing Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

J. J. MOORE.

Subscribed and sworn to before me this 15th day of July, 1908.

[Seal]

CEDA de ZALDO.

Notary Public in and for the City and County of
San Francisco, State of California.

Exhibit "A" [to the Answer].

J. J. MOORE & CO.,

San Francisco,

COAL.

San Francisco, Cal., June 26, 1907.

THIS CHARTER-PARTY, this day made and concluded BETWEEN Henry Nelson, Managing Owner of the good Ship or vessel called the Am. Str. "Columbia," measuring 1327 tons register or thereabouts, now at San Pedro, Cal., and J. J. Moore & Co., of San Francisco, Merchants and Charterers,

That the said ship, being tight, staunch and strong, and every way fitted for the voyage, shall with all possible despatch proceed to Newcastle (NSW.),

Australia, and there load in the usual and customary manner a full and complete cargo of Coal from such Colliery as Charterers or their agents may direct, which said Merchants bind themselves to ship, to be brought to and taken from alongside at the merchants' risk and expense, not exceeding what she can reasonably stow and carry over and above her Tackle, Apparel, Provisions and Furniture.

In the event of the vessel being in difficulty or putting into any port for any purpose whatever, the Captain to inform charterers by telegram, and the vessel to consign to charterers' agent there.

The Captain to take a sufficient quantity of coal on board at Port of Loading for ship's use for the Voyage, say not less than ten tons, to be supplied at current rate, such quantity to be endorsed on *Bill Lading*, all on board to be delivered with the exception of such stores as remain unused; and being so loaded shall therewith proceed to San Francisco harbor, Cal., to discharge at any safe wharf or place within the Golden Gate and deliver the said full and complete cargo in the usual and customary manner, at any safe wharf or place or into Craft alongside as directed by Consignees.

Freight for the said Cargo to be paid on final discharge at the rate of (22.-) Twenty-two shillings sterling per ton of 2240 lbs. on the quantity delivered, or upon the quantity as per Bill of Lading, and Pit Certificate, at Consignees' option, to be declared before breaking bulk.

(The Act of God, the King's Enemies, Perils of the Sea, Fire, Barratry of the Master and Crew, Ene-

mies, Pirates, Thieves, Arrest and Restraint of Princes, Rules and People, Loss or Damage from Fire on Board, in Hull, on Craft, or on Shore; Collisions; Stranding and other accidents of navigation excepted, even when occasioned by the negligence, default or error in judgment of the Pilot, Master Mariners, or other Servants of the Ship-owners. Frost or Floods, Fire, Strikes, Lockouts, or Accidents at the Colliery directed, or on Railways, or any other hindrance of what nature soever beyond the Charterers' or their agents' Control, throughout this Charter, always excepted.)

All Port Charges, Pilotages, Wharfage Dues and Charges, at ports of loading and discharge, and half-cost of weighing at Port of Discharge, if incurred, to be paid by ship as customary.

Should vessel be free from wharfage during Discharge the above freight to be reduced by 4½d per ton.

Payment of Freight to be made as follows: On right and true delivery of cargo in Golden Coin at the Exchange of \$4.80 to the £ sterling.

The Captain to sign Bills of Lading without prejudice to this Charter-party, but at no less than chartered rates. Charterers' responsibility to cease on cargo being loaded. Owners to have lien on cargo for freight and demurrage. General Average, if any, as per York-Antwerp Rules of 1890,

Extra Insurance, if any over and above Two and One-half (2½%) per cent to be paid by Vessel.

To be Discharged as customary, in such customary berth as consignees shall direct, ship being always afloat, and at the average rate of not less than 150

tons per weather working day (Sundays and holidays excepted), to commence when the ship is ready to discharge, and notice thereof has been given by the Captain in Writing; If detained over and above the said laying days, demurrage to be at 3d. per register ton per day.

Charterers have the option of moving Vessel during discharge, they paying cost of Towage; if more than one move is required. The vessel to be consigned inwards to charterers, or their Agents, at Port of Discharge, paying them (5) five per cent Commission on the Total Inward Freight.

Should the vessel not arrive at Newcastle, N.S.W., on or before sundown on the 15th of November, 1907, Charterers to have the option of canceling this Charter-Party.

Ship to employ Charterers' Stevedore to take in, trim, and discharge coal, paying current rate for same.

Captain will receive loading instructions from Davies & Fehon, Sydney (through R. B. Wallace, Newcastle), whom the Owners hereby accept as Agents for the ship, and to be consigned to them free of commission, but paying /5s. 0 d. Agency Fee.

Penalty for non-performance of this agreement, estimated amount of Freight.

Lay days for loading not to exceed 20 working days

and to begin 24 hours after Captain has given written notice that vessel is ready to receive cargo.

HENRY NELSON.

Witness:

O. J. BEYFUSS.

Signed: J. J. MOORE & CO.,

J. J. MOORE, President.

Witness:

O. J. BEYFUSS.

[Endorsed]: Filed Jul. 16, 1908. Jas. Brown, Clerk. John Fouga, Deputy Clerk.

[Title of Court and Cause.]

Testimony Taken in Open Court.

Hon. J. J. DE HAVEN, Judge.

Wednesday, November 4th, 1908.—Monday, November 9th, 1908.

APPEARANCES:

H. W. HUTTON, ESQ., for Libelants.

WM. DENMAN, ESQ., for Claimant.

(This libel now came on for hearing in its regular order on the calendar and the following proceedings were had.)

[Statement by Mr. H. W. Hutton.]

Mr. HUTTON.—If your Honor please, the libellant is prepared to proceed, but it may be possible that after the testimony of the defendant is in, I shall have *at ask* for a continuance. I am ready to proceed as far as I can. I was not altogether certain about the meaning of Mr. Denman's motion. He

made a motion to set this case for immediate hearing. I did not understand it was coming up this morning. I have made such preparations as I have been able to since Monday. When the testimony that I have here to-day, Mr. Denman's testimony is through, it may be possible that I shall have to ask your Honor for a short continuance to get further information that I have been unable to procure between now and Monday. With that understanding I am ready to proceed.

The COURT.—Proceed with your case.

Mr. HUTTON.—Permit me to state the purpose of it. The action is one brought by the owners of the ship "Columbia" for demurrage under a charter-party. The libel sets forth the ownership of the ship, and the fact that the defendant is a corporation, and that about the 26th of June, 1906, the ship "Columbia," then lying at San Pedro, was chartered by the plaintiff for defendant for a voyage from there to Newcastle, Australia, to load coal and to return to San Francisco. That is practically not denied, except the ownership of the vessel, which they say they have no information about. We allege that the vessel went there and returned to San Francisco with a load of coal, arriving here on the 16th day of January, in the present year. The charter-party requires that notice shall be given to the charterer of the arrival of the vessel. We allege that was duly given, and that is not denied. It further specifies that the discharge shall be at the rate of 150 tons a day, and commence when notice of readiness of the ship is given. It was given on the 15th of January, as I

say. It further specifies that the demurrage shall be for any detention over the lay days; that the demurrage shall be at the rate of a specified sum a day.

The libel further alleges that the lay days of this vessel expired on the 7th of February, 1908, at 10 o'clock in the forenoon, but she was not unloaded until the 21st day of March, at 1 P. M., which we will show by evidence. She was detained $42 \frac{1}{3}$ days over her lay days.

This suit was originally commenced during the running of those lay days and was for the demurrage that accrued up to the time of the filing of the libel. Subsequently by stipulation I filed a supplemental libel so that the whole matter could be tried in this case, and we claim the whole of the demurrage for the $42 \frac{1}{3}$ lay days. There was also an amendment to the libel filed which is on file in this case. The charter-party calls for a bill of lading to be signed by the Master upon receipt of the cargo, and we allege that he signed them in triplicate, and one of them was endorsed by the alleged shipper of the coal, sent to the defendant and received by him. In that bill of lading there is a stipulation that the consignee is to pay all freight and all other clauses and conditions of the charter-party.

We further allege in this amendment that J. J. Moore & Co. received a copy of it which was endorsed, and that they were the consignees, which is not denied in the answer. Our contention is that they are liable for the $42 \frac{1}{3}$ lay days. There is no copy of the charter-party attached to the libel, but Mr. Denman has attached one to his answer. (Addressing

counsel.) I call your attention, Mr. Denman, to the fact that you have made a mistake. You designate this vessel as a steamer in this copy. The vessel was a sailing vessel. That would be against you. With that exception it appears to be right.

[**Testimony of H. Larsen, for the Libellant.**]

H. LARSEN, called for the libellant, sworn.

Mr. HUTTON.—Q. You were the master of the American ship “Columbia,” were you not, between June of last year, and March of this year.

A. Yes, sir.

Q. Do you remember going with a load of coal to Newcastle, and returning to San Francisco with a load of coal? A. Yes, sir.

Q. Do you remember what day you arrived in San Francisco? A. On the 14th of January.

Q. Of this present year? A. Yes, sir.

Q. On the next day did you visit the office of J. J. Moore & Co.? A. Yes, sir.

Q. Did you take any paper with you?

A. Yes, sir, I brought up a note that the ship was ready to discharge cargo.

Q. I show you a paper, and ask you if that is the paper that you took (handing)? A. Yes, sir.

Q. I call your attention to a stamp on top “Received January 15th, 1908, J. J. Moore & Co., 12 M.”, with some initials underneath. I cannot designate them. I will ask you where that stamp was put upon that paper.

A. That stamp was put on in J. J. Moore’s office. I asked them to put it on.

Q. And the paper was returned to you?

(Testimony of H. Larsen.)

A. Yes, sir.

Mr. DENMAN.—Q. Is that your signature?

A. No, sir, that is the Manager's Henry Nelson.

Q. Is he here this morning? A. Yes, sir.

Mr. HUTTON.—I offer that letter in evidence and ask to have it marked Libellant's Exhibit "A."

(The letter is marked Libellant's Exhibit "A.")

Mr. HUTTON.—These initials, I think you concede, are those of Mr. Mainland.

Mr. DENMAN.—I do not know whose the initials are, but that is our stand.

Mr. HUTTON.—Q. At this time was the ship "Columbia" ready to discharge, as far as the ship was concerned? A. Yes, sir.

Q. Nothing remained to be done but dock her?

A. Nothing remained to be done but dock the ship.

Q. At the time you delivered that paper did they designate to you any dock where you were to discharge? A. No, sir.

Q. Did you get any information at all at that time as to where you were to discharge?

A. I asked them where the ship was going to be discharged. They said they did not know, and furthermore they said there would not be anything done for three or four weeks to come.

Q. That is all the information you got?

A. Yes, sir.

Q. Do you remember what day you were finally discharged? A. On the 20th of March.

Q. At what hour of the day?

(Testimony of H. Larsen.)

A. About 1 o'clock. I could not say to a few minutes.

Q. During the whole of the time that the ship laid there up to the time you commenced to discharge her was she, as far as the ship was concerned, ready to discharge at all times? A. Yes, sir.

Cross-examination.

Mr. DENMAN.—Q. To whom did you present this paper?

A. I don't know the gentlemen's name in the office.

Q. Who was there at the time?

A. I don't know any of their names in there. I asked if J. J. Moore was there. I could not say exactly what he told me. He looked at the notice and accepted the notice, that was all.

Q. Where you alone at that time?

A. Yes, sir.

Q. No one with you?

A. No, sir, I was alone when I went in there.

Q. You had a conversation you say, but you do not recollect exactly what that conversation was?

A. Nothing more than what I stated a while ago, that they told me there would be nothing done for three or four weeks to come.

Q. What was the reason they gave for that?

Mr. HUTTON.—Objected to as assuming a fact not in evidence, and further that it is self-serving testimony.

The COURT.—I overrule the objection.

Mr. HUTTON.—I will take an exception.

(Testimony of H. Larsen.)

A. They told me there were too many ships ahead of me to discharge.

Mr. DENMAN.—Q. In the port?

A. Yes, sir.

Q. Did you during that period know of any dock that was free for the docking of your vessel?—during that time? A. No, sir.

Mr. HUTTON.—I object to that on the ground that the charter-party in this case requires and directs the owner of this vessel to unload where he is directed. It makes no difference what he heard unless he was told by the charterer where to dock.

The COURT.—He said he has not heard anything about it. Objection overruled.

Mr. HUTTON.—I will take exception.

Mr. DENMAN.—Q. The fact was there was a very heavy influx of shipping at that time, and the docks were all loaded. That is true, is it not?

Mr. HUTTON.—Objected to as immaterial, and further it was not incumbent on the master to find a dock, in this case.

The COURT.—Objection overruled.

Mr. HUTTON.—I will take an exception.

The COURT.—I will hear the evidence, and see what it is.

Mr. HUTTON.—Q. That is a fact, is it not?

A. I do not know. I did not go round the wharves to look. I got orders to wait from J. J. Moore. They told me they would let me know when to dock the ship.

(Testimony of H. Larsen.)

Mr. DENMAN.—Q. At that time it was a fact that this harbor was crowded with vessels, and it was exceedingly difficult to obtain docking facilities?

A. They told me so in the office. I did not look round.

Q. It was common talk on the water front?

Mr. HUTTON.—I object to that as hearsay testimony.

The COURT.—I think it would be. I think that could be proven by some one who knows it. The Captain says he does not know anything about it. He did not look round.

Mr. DENMAN.—Q. Where did you finally discharge? A. At Folsom Street.

Q. Whose dock is that?

A. The Western Fuel Company's dock.

Q. Is that a customary dock for discharging of coal cargoes?

A. Yes, sir. There are several bunkers there.

Q. That was a customary bunk, was it?

A. Yes, sir. There were five or six of them. That is the customary place to discharge coal at the bunkers.

Q. How long were you engaged in discharging the vessel after you got there?

A. I don't remember; I think about 2 days and a half.

Q. After your vessel was in dock did you have any conversation with J. J. Moore about discharging the vessel? A. No, sir.

(Testimony of H. Larsen.)

Q. Did you have any correspondence between yourself and J. J. Moore after the vessel was in dock that you know of? A. No, sir.

Q. How did you receive finally this notice that you were to go in and dock your vessel and discharge her?

A. I got notice from my managing owner. He got notice from J. J. Moore & Co.

Q. You do not know anything of your own knowledge regarding that transaction? A. No, sir.

Redirect Examination.

Mr. HUTTON.—Q. Do you know whether the steamer “J. A. Lunsmann” was in port at the time that you arrived here? A. No, sir.

Q. I ask you if you know. Do you say you do not know, or that she was not here?

A. She was not here then. I saw the captain afterwards when he came in.

Q. She arrived after you?

A. She arrived about a week after me.

Q. She loaded with coal from the same port that you came from? A. Yes, sir.

Q. Do you know whether she discharged before you did, or not, in San Francisco?

A. Yes, sir; she discharged before I did.

Q. Do you know how many days?

A. No, sir, that I could not tell you.

[**Testimony of Henry Nelson, for the Libellant.**]

HENRY NELSON, called for the libellant, sworn.

Mr. HUTTON.—Q. You were the managing owner of the ship “Columbia,” and you are at present, and have been for a couple of years last past?

A. Yes, sir.

Q. Who were the owners of that vessel between June, 1907, and say, the latter part of March, 1908?

A. I have got a list of the owners here, and I will read them off. Henry Nelson; Andrew Anderson; A. Anderson & Co.; Edward Carlsen; John J. Beaton; Henrietta N. Hobbs; Elvira W. Hobbs; Clarence W. Hobbs; Edward Henrix; Angus Beaton; George Boole & Co. (Inc.); Harry F. Chase; Malcom P. Chase; Samuel B. Chase; L. Chase; Mrs. Marion B. Walden; Margaret J. Wall; Mrs. E. G. Boole; Mary L. Chase; Wm. B. Chase, Jr.; Dorthy M. Chase; and Fred J. Chase.

Q. You signed the charter-party, did you not, about the month of May, or June, 1907, the one in issue in this case?

A. I did.

Q. Did you sign it as managing owner on behalf of those owners that you mentioned?

A. As managing owner on behalf of the owners.

Q. What is the registered tonnage of the “Columbia”?

A. Her net tonnage is 1,327 tons and a fraction over.

Q. Net? A. Yes, sir.

Q. What is her gross registered tonnage?

(Testimony of Henry Nelson.)

A. 1,471.

Q. I show you a paper that is dated San Francisco, January the 18th, 1908, and ask you whether you ever saw that paper before (handing)?

A. I did.

Q. How many copies of that were made; that is, how many duplicates? A. Two.

Q. What became of the other one?

A. The other one was sent to J. J. Moore.

Q. By what method?

A. By the captain.

Q. No. I mean this particular paper that you have in your hand of January the 18th. How was that sent up?

A. This was sent up by mail—by registered mail.

Q. I show you the return postal, and ask you if that is the receipt that you got for the letter at the time that you sent it, and the return receipt on it?

A. That is the return receipt from J. J. Moore's office by mail.

Q. With respect to this paper. You enclosed one of these in an envelope addressed to J. J. Moore & Co. at what place?

A. Moore's office is on Pine Street.

Q. Did you register the letter?

A. Yes, sir.

Q. That is the return receipt?

A. That is the return receipt. I mailed the letter in the postoffice.

Mr. HUTTON,—I offer this as Libellant's Exhibit

(Testimony of Henry Nelson.)

“B.” Do you wish me to put in this receipt, Mr. Denman. It only encumbers the record.

Mr. DENMAN.—No.

Mr. HUTTON.—You admit they got it on that day?

Mr. DENMAN.—I admit the letter was received.

Mr. HUTTON.—This is dated January the 18th. 1908.

(The letter is marked Libellant’s Exhibit “B.”)

Q. Between the 15th and 18th of January, 1908. did you call at the office of J. J. Moore & Co., with reference to the ship? A. I did.

Q. Whom did you see?

A. I saw Mr. J. J. Moore.

Q. How many times did you call?

A. I was there twice.

Q. Did you have any conversation with him?

A. I did.

Q. Just state what the conversation was?

A. I went up there to see him in regard to getting some money to disburse the crew. He promised me some, but he charged me too much interest, and I did not accept it. I went up and in the afternoon he sent for me. He wanted to know if he could make some arrangement whereby to keep the vessel for storage. I said I thought that could be arranged. He asked me what I would charge him for it. I told him I could not say unless I saw some of the balance of my owners. I told him that the ship “McLaren” was getting \$200 a month and I did not feel inclined to let the vessel lay with a cargo of

(Testimony of Henry Nelson.)

coal in for that amount of money. He told me the "McLaren" was not getting that, but was only getting \$100 a month. That ended the conversation. I told him I would not accept any such thing as that unless I saw the balance of my owners. I did interview some of my owners, and they thought they should be paid about \$500 a month. I asked him \$500 a month, and 90 per cent of the cargo money to be paid them. He said he would not pay no such thing. He said my vessel was not worth \$500, and he would not pay that. I told him that ended the offer, and I would stand on the charter-party. That is about all the conversation I had with Mr. Moore.

Q. I show you a letter dated March the 16th, 1908, and ask you whether you ever saw that letter before (handing)?

A. Yes, sir.

Mr. HUTTON.—It is admitted by Mr. Denman that this paper bears the signature of William Mainland, the Secretary of J. J. Moore & Co. I will offer this letter in evidence as Libellant's Exhibit "C." I would *like this* letter to your Honor (reading):

[Libellant's Exhibit "C" (Read in Evidence).]

"J. J. MOORE & CO.

Shipping and General Commission Merchants.

215-217 Pine Street.

San Francisco, Cal., March 16th, 1908.

Henry Nelson, Esq.,

Managing Owner Ship "Columbia,"

San Francisco, Cal.

Dear Sir: Will you please have the "Columbia" docked at the bulkhead berth alongside the Folsom

(Testimony of Henry Nelson.)

St. bunkers of the Western Fuel Co. on the tide which serves about 11 o'clock tomorrow morning and have everything in readiness to commence discharge as soon as the vessel is docked.

Yours faithfully,

J. J. MOORE & CO.

WM. MAINLAND,

Secretary."

(The letter is marked Libellant's Exhibit "C.")

Q. State whether or not that is the first notice you received of where to dock the "Columbia."

A. That was the first occasion.

Q. Were you ever told where the "Columbia" was to dock? A. No, sir.

Q. That is the first intimation that you got?

A. That is the first intimation that I got.

Q. With respect to the rainy days. You computed them during the time that the "Columbia" was lying here, did you not?

A. I did.

Q. When ought she to be discharged, according to your computation, excluding lay days, holidays. Sundays and nonworking days?

Mr. DENMAN.—One minute, Mr. Hutton.

Mr. HUTTON.—It is not denied in the answer.

Mr. DENMAN.—It calls for the conclusion of the witness.

The COURT.—He will probably give the details of it.

Mr. DENMAN.—If that is to be followed up I withdraw the objection.

(Testimony of Henry Nelson.)

Mr. HUTTON.—It is not denied in the answer. The libel alleges what the rainy days are, and there is no denial.

Mr. DENMAN.—Our stipulation covers that.

Mr. HUTTON.—No, it does not.

Q. What were the rainy days. When ought she to have been discharged?

A. She ought to have been discharged on the 7th of February.

Q. At what hour in the morning?

A. At 10 o'clock.

Q. And when was she finally discharged?

A. She was discharged on the 20th of March, about one o'clock.

Q. Pending this time, state whether or not you communicated with me about the matter, while the vessel was lying here?

Mr. DENMAN.—What is the purpose of that?

Mr. HUTTON.—To show I was authorized to communicate with J. J. Moore & Co., about it.

A. I did communicate with you, yes.

Q. After the 7th of February, did you communicate daily with the office of J. J. Moore & Co.?

A. I sent them a bill every day. The first bill I sent them there was 7 days demurrage due, and after that I sent them a bill every day until the vessel was finally discharged.

Q. Was the "Columbia" ready or not to be discharged during all those days, as far as the ship was concerned?

(Testimony of Henry Nelson.)

A. The ship was ready to discharge just as soon as she came into port.

Q. You have been master of the ship "Columbia" have you not?

A. Yes, sir, between 10 and 11 years.

Q. Who paid the freight money to you for this vessel?

A. J. J. Moore & Co.

Q. That was after the coal was discharged?

A. That was after the coal was discharged.

Q. Has any of this demurrage been paid?

A. No, sir.

Q. At the time that you received this notice to discharge the "Columbia" was she docked, pursuant to the notice of March 16th, 1908?

A. I got the notice, and then they docked her the next day. I got the notice to be ready to dock the vessel the next morning at 11 o'clock, which we done.

Q. Then you docked her?

A. We docked her right off, as the letter said.

Q. How long have you been managing owner of the "Columbia"?

A. I have been managing owner of the "Columbia" since about December, or January, 1906.

Q. How many days was she detained?

A. She was detained here 42 days and one-third.

Cross-examination.

Mr. DENMAN.—Q. You have testified that in your opinion the vessel's lay days expired at a certain time. How do you come to that conclusion?

A. By reading the charter-party, what amount of

(Testimony of Henry Nelson.)

lay days she was entitled to and eliminating therefrom the holidays.

Q. Have you a list of them?

A. No, sir, I turned them in to Mr. Hutton.

Q. Can you recollect them? A. Yes, sir.

Q. Can you testify to them?

A. No, sir, because I do not carry all that in my head.

Q. You have no recollection of the days on which you base your conclusion that the lay days expired at a certain time?

A. I noted it down on a piece of paper, and turned it all over to Mr. Hutton.

Q. You cannot testify to that at this time?

A. Not from my recollection.

Mr. HUTTON.—I move to strike out the testimony, if your Honor please.

The COURT.—Let it go out.

Mr. HUTTON.—I will have to send to my office for the list, if your Honor please. I do not understand that is denied. Mr. Denman thinks it is.

Mr. DENMAN.—If it is not I shall move to amend so that it can go in.

Mr. HUTTON.—I will have to send to my office to get the information. I do not want to take any chances on that.

Mr. DENMAN.—Q. Do you know who finally got this coal?

A. Yes, sir, the Western Fuel Company, I presume. I don't know any more except it was discharged at its dock, that is all.

(Testimony of Henry Nelson.)

Q. Did you ever try to find any other dock to discharge this vessel at?

A. He told me he would let me know.

Q. Did you ever yourself try to find any dock to discharge this vessel at?

A. No, sir, I did not know where to go and look for a dock. I did not know where he wanted the coal.

Q. What was the condition of the Harbor at that time as to dockage facilities?

A. In what respect?

Q. Was the Harbor crowded, or was it free.

Mr. HUTTON.—I object to that on the ground that it is immaterial.

The COURT.—I will take the answer of the witness.

Mr. HUTTON.—I will take an exception.

A. I have seen the Harbor a great deal more crowded, and seen it not so crowded.

Mr. DENMAN.—Q. The fact is that every dock in the harbor at which you could have discharged was during that entire period filled with other vessels?

A. There were lots of empty docks.

Q. There were lots of empty docks?

A. Yes, sir.

Q. Coal discharging docks?

A. I have discharged coal at all kinds of docks.

Q. What are the customary docks for the discharge of coal in San Francisco?

(Testimony of Henry Nelson.)

A. They discharge coal in bunkers and on open wharves. I have discharged lots of coal at open wharves.

Q. Are you carrying coal cargoes here continually right along, off and on?

A. I did carry coal cargoes here for about 12 or 13 years.

Q. How long ago?

A. About ten or 12 years ago.

Q. Do you know what the custom is of discharging, at the present time in the port?

A. They discharge at bunkers and at open wharves.

Q. Do you know the bunkers of the Western Fuel Company? A. Yes, sir.

Q. Are those customary places of discharge in San Francisco? A. I know the wharves.

Q. Are *they* customary places of discharge in San Francisco for coal cargoes?

A. Yes, sir, they discharge coal there.

Q. Where were you finally discharged?

A. At Folsom Street Bunker.

Q. That is a customary place for the discharge of coal?

A. That is one of the customary places.

Q. You cannot testify as to when your lay days expired. Do you know when your discharge began?

A. When we started in to discharge?

Q. Yes.

A. I could not tell you what time we started in to

(Testimony of Henry Nelson.)

discharge. The letter from J. J. Moore & Co. to me tells what day to commence discharging.

Q. That is the day after that was received?

A. Yes, sir.

Q. Where was the vessel lying until she finally was docked?

A. She was lying in the bay here.

Q. Whereabouts in the bay?

A. She was lying up off the 16th Street dock; somewhere in the neighborhood around there.

Q. What preparations were made to discharge her?

A. What preparations were made?

Q. Yes.

A. The day after the vessel came in the yards were cock-billed, and the vessel made ready to discharge.

Q. How long did that condition continue?

A. That condition continued until she finally got discharged at the dock. There was not so very much to do to get the vessel ready.

Redirect Examination.

Mr. HUTTON.—Q. How many places are there in San Francisco, that is, docks where they do nothing but discharge coal?

A. Where they do nothing but discharge coal?

Q. Yes, that is exclusively set aside for the purpose of discharging coal.

A. There are six places that I know of.

Q. How many are there in Oakland?

A. Three, I think, that I can call off now.

Q. Please name those in San Francisco that you

(Testimony of Henry Nelson.)

know of, that is, where they do nothing but discharge coal.

A. There is one on Beal Street; one on Folsom Street; one on Howard Street; one on Mission Street; one on Vallejo Street; and one down at Green Street or Union Street—one of those two streets.

Q. State whether or not during the time that the "Columbia" was lying there, that is, from the 15th of January to the 20th of March, or to the 15th of March, I will say, whether there was ever any time when you noticed that some of those places were disengaged and no ship there?

A. Yes, sir, I saw several times there was no vessels at the bunkers.

Q. No ships at any of those places?

A. I do not say at all of them at the same time.

Q. There were times when there were no ships there?

A. I saw bunkers that were disengaged.

Q. Take Folsom Street wharf—that is one of the Western Fuel Company's wharves?

A. Yes, sir.

Q. During the time that the "Columbia" was lying idle did you ever see that place vacant?

A. I would not specify that particular bunker.

Q. Take the three, Folsom, Howard, and Mission. Those were the Western Fuel Company's berths?

A. Yes, sir.

Q. Did you ever see one of those places during that time with no ship at it at all?

A. Yes, sir.

(Testimony of Henry Nelson.)

Q. Frequently or otherwise?

A. I saw several times.

Q. That there was no vessel there?

A. That there was no vessel there.

Q. No vessel discharging? A. Yes, sir.

Recross-examination.

Mr. DENMAN.—Q. How long did these bunkers remain idle. In the first place, what bunker did you say was not occupied?

A. I would not specify the particular bunker I have seen some of those bunkers idle.

Q. You certainly can recollect. There are only three of them there. They are marked by distinct and peculiar marks. Which was it that you saw idle?

A. I seen the Howard Street and the Mission Street bunkers idle.

Q. For how long a period? Do you remember what day you saw the Howard Street bunker idle?

A. I don't remember the day. I did not take any particular notice. I did not consider it was any of my business. I did not pay any particular attention when I saw the bunker idle, that is, the wharf.

Q. How long did they remain idle?

A. They may have remained idle a day at a time, or two days at a time.

Q. You cannot swear to that?

A. I cannot swear to that, but I seen the wharves idle.

Q. Do you know whether that was in the shifting from one vessel to another or not?

(Testimony of Henry Nelson.)

A. I should naturally think it would not take a day or two to shift a vessel. I did not inquire into that.

Q. You do not know whether that was the cause of the idleness at that time? A. No, sir.

Q. You say you have been carrying coal cargoes into this port. What is the custom of this port with regard to the discharge of vessels which have arrived one after another and is to be docked at a certain dock?

Mr. HUTTON.—I object to that because it assumes a custom. Further, it is not in issue in this case, and is immaterial, and it is not shown that the witness knows.

The COURT.—I will hear the answer.

Mr. HUTTON.—I will take an exception.

A. What is the question?

Mr. DENMAN.—Q. Suppose a vessel arrives January the first, and another January 2d, and another January 3d. They are assigned to a certain dock, or a certain series of docks, three docks, say, and all the docks are occupied when they are assigned at that time. Gradually the docks become free. In what order are the vessels sent to the dock—of those three vessels that I have mentioned?

A. There are lots of causes that govern—

Q. I am eliminating that. I am presuming just that situation of vessels arriving January 1st, January 2d and January 3d. We will assume they are all sailing vessels, and have coal, and been assigned to a certain dock. What is the order in which, un-

(Testimony of Henry Nelson.)

der the custom of this port, those vessels will be docked?

A. It is according to how the charter-party reads.

Q. We will presume there are three different charter-parties, and that they all differ. What is the custom of the port with regard to the assignment of those docks to the different vessels as they come in?

Mr. HUTTON.—The same objection, that it assumes there is a custom; that it is not shown the witness is familiar with it if there is one, and further, it is immaterial and an attempt to set aside the express provision of the charter party by an alleged custom.

The COURT.—Answer the question, if you can.

Mr. HUTTON.—I will take an exception.

A. It is all according to how the charter-party reads.

Mr. DENMAN.—Q. You said that before. I am presuming there is no charter-party.

The COURT.—The witness' testimony is there is no uniform charter-party. That is what it amounts to. If each case depends on the particular charter that the ship has there is no custom that governs every charter or all charters.

Mr. DENMAN.—There may be a custom—

The COURT.—If what he says is true there is no custom; at least he does not know of any.

Mr. DENMAN.—Suppose there is no provision in the charter-party for the docking at all, and those three vessels come in. In what order would they be docked?

(Testimony of Henry Nelson.)

Mr. HUTTON.—I object to the question as immaterial. There is a charter-party here and an express stipulation in the charter-party as to how this vessel is to be unloaded; therefore the question is immaterial.

The COURT.—Let the question be answered, if the witness can answer it.

Mr. HUTTON.—I will take an exception.

A. What was the question?

Mr. DENMAN.—Q. Suppose each one of these charter-parties reads “to be discharged as customary.” Suppose each one of those three charter-parties contain that provision, and the vessels arrive January the 1st, January 2d, and January 3d. What is the order in which they would be docked?

Mr. HUTTON.—Objected to as calling for the witness’ construction of certain language which has a well defined meaning.

The COURT.—If he knows he can say so. If he does not know he will say so.

Mr. HUTTON.—Then the construction of the words “to be discharged as customary” that has been given by the courts of that language is, that it relates solely to the mode of taking the coal from the ship, and not the time of discharge, and consequently, the answer is immaterial.

The COURT.—(Addressing the witness.) Can you answer the question?

A. If the charter-party reads that the vessel shall have so many lay days to discharge, then she is supposed to be discharged in that length of time, and

(Testimony of Henry Nelson.)

it is up to the charterer to get the berth to discharge the vessel in that time or else pay demurrage. That is the way I always understood the charter-party, and that is the way I always construed the charter-party. If the charter-party reads "as customary discharge," that is the mode of discharging whether she is going to be discharged at the bunkers or at open wharves, or by buckets, or by steam or hand, or in lighters or barges.

Mr. DENMAN.—Q. Is that all you can say about it?

A. That is all I can say. That is the way I always understood a charter-party. In my charter-party it specifies that the vessel shall be discharged so many tons of coal per day. After that the vessel goes on demurrage.

Q. I am not talking about the relationship of the charter-party with the consignee or the charterers with the owners of the vessel. What I am trying to find out is what is the custom of the docks in this city. Who controls the use of the docks other than the private docks of the Western Fuel Company and others.

A. The Western Fuel Company controls some, and the Pacific Coast Company controls some.

Q. Who controls the others?

A. There is a concern at Vallejo Street wharf.

Q. Has the State any docks?

A. The State owns all the docks.

Q. Who under the State has charge of assigning to the docks?

(Testimony of Henry Nelson.)

Mr. HUTTON.—Objected to as matter that relates entirely to the rules of the Harbor Commissioners, and that is the best evidence.

The COURT.—I sustain the objection. You had better get some witness that can prove what the custom of the port was. This witness does not know anything about it.

Mr. DENMAN.—Very well; that is satisfactory.

Q. That is all you have to say about the condition of those docks that you saw idle on one or two occasions? A. That is all.

Mr. HUTTON.—I will now ask you, Mr. Denman, for a letter addressed to myself by J. J. Moore & Co., dated on or about the 1st of February, 1908.

Mr. DENMAN.—There it is (handing).

Mr. HUTTON.—And one dated February 8th.

Mr. HUTTON.—I offer in evidence a letter addressed by myself to J. J. Moore & Co., dated February 1st, 1908, and ask to have it marked Libellant's Exhibit "D."

(The letter is marked Libellant's Exhibit "D.")

I also offer in evidence a letter from J. J. Moore & Co., in reply thereto dated February 3d, 1908, and ask to have it marked Libellant's Exhibit "E."

(The letter is marked Libellant's Exhibit "E.")

I now offer in evidence as Libellant's Exhibit "F," a letter dated February 8th, 1908, from myself to J. J. Moore & Co., referring to this same matter.

(The letter is marked Libellant's Exhibit "F.")

I also offer the reply thereto from J. J. Moore & Co. dated February 10th, 1908.

(Testimony of Henry Nelson.)

(The letter is marked Libellant's Exhibit "G.")

If your Honor please, that is as far as I am able to proceed this morning. I had a subpoena issued for the Chief Wharfinger of the State Board of Harbor Commissioners, and the Marshal advises me he is not in town. I do not need him at this time, but I will in rebuttal. I also wish to clear upon the matter about the lay days by putting in testimony.

The COURT.—Can you proceed, Mr. Denman?

Mr. DENMAN.—Yes.

[Testimony of J. J. Moore, for the Defendant.]

J. J. MOORE, called for the defendant, sworn.

Mr. DENMAN.—Q. Do you remember, Mr. Moore, the circumstances of the arrival of the ship "Columbia" in this port in January of this year?

A. I remember the ship getting in and Captain Nelson coming to see me a few days afterwards; probably two days afterwards.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. Concerning that vessel? A. Yes, sir.

Q. What was the nature of that conversation?

A. I told him that the cargo of coal was sold to the Western Fuel Company, and the ship would dock at their bunkers.

Q. Did you have any conversation as to the condition of those bunkers?

A. That they were crowded, and the vessel would probably be delayed three or four weeks before she could be docked.

(Testimony of J. J. Moore.)

Q. Where did that conversation occur?

A. In my office.

Q. And did you receive subsequently this letter that has been introduced in evidence here regarding the notice?

A. I do not remember that. It did not come to my hands. I presume it must have.

Q. What was the condition of the waterfront at that time with regard to the docking of coal-carrying vessels?

A. The coal bunkers were all about three to four or five weeks behind time.

Q. What do you mean by "three to four or five weeks behind time"?

A. I mean there were so many ships in the harbor dischargeable that they would be three or four weeks on demurrage—most of them—all of them.

Q. Is there any custom of this port with regard to the discharge of vessels arriving in San Francisco for docking here?

A. All ships are docked in their turn.

Q. What does that mean?

A. It means as a ship arrives she is put down in the books, and the next one is put down, and they are docked accordingly.

Q. How long have you been engaged in the coal business in San Francisco?

A. Twenty-five years.

Q. Have you been familiar with the custom of discharging this cargo in this port during that time?

A. Very.

(Testimony of J. J. Moore.)

Q. How long has that been the custom?

A. All the time I have been in business.

Q. Do you ship to other ports of the world?

A. We ship goods to other ports.

Q. You receive cargoes from other ports?

A. Yes, sir.

Q. Is that a universal custom of harbors, that vessels shall be docked in their turn where the harbor facilities are crowded?

A. It is. In some ports steamers take precedence over sailing vessels.

Q. What is the custom of this port in that regard?

A. I could not tell you. I presume it is that they take their turn.

Q. Have you kept the account of rainy days during the period in question, or was that done by some one in your office?

A. By some one in my office.

Q. Were you ever down to the dock yourself?

A. No, sir, not for a long time.

Cross-examination.

Mr. HUTTON.—Q. All you know about the bunkers being crowded is what some one has told you?

A. Yes, sir, I was told. I knew we had several vessels in our office that were *that were* all behind.

Q. Is it not a fact that the information that you got was that the bunkers were full, and consequently they could not put any more coal in them?

(Testimony of J. J. Moore.)

A. Oh, no, they were entering the bunkers all the time from day to day, as quick as they could.

Q. Is it not a fact on account of the vast amount of coal that your concern brought into town that they were forced to hire a number of other bunkers to store coal in and it was a crowding of bunkers, and not an overplus of other ships?

A. We did not import one-quarter of the coal that came into the harbor.

Q. Did you not import about that time over 40,000 tons of coal that arrived between October 6th, 1907, and January 1st, 1908?

A. I could not answer that question.

Q. I will ask you this: Did not the British ship "Strathmarin" come here chartered to you?

A. I think so.

Q. She brought 6,007 tons in on October 6th, 1907?

A. We have always ships or steamers coming in with coal all the time. We are very seldom without ships coming in with coal.

Q. I will ask you if the British ship "Borderer" did not arrive here on October 19th, 1907, with 5,893 tons of coal, consigned to you?

Mr. DENMAN.—What date do you claim that vessel was discharged?

Mr. HUTTON.—I will prove that afterwards.

A. The steamer arrived to us. I could not give you the dates. There is a young man who knows and can tell you. He has got it on his book.

(Testimony of J. J. Moore.)

Q. I prefer to ask you. With respect to the British steamer "Valdivia," state whether or not you know she arrived in this port with 5,938 tons of coal on October 29th, 1907?

A. I know she arrived. I could not give you the date.

Q. State whether or not the British steamer "Creaighall" with 5,630 tons arrived consigned to your firm about November 9th, 1907?

A. The "Craigall"?

Q. Yes.

A. I cannot give you the dates. She did arrive to us.

Q. She came consigned to you?

A. Yes, sir.

Mr. DENMAN.—I can give you the dates of that.

Mr. HUTTON.—Q. State whether or not the Norwegian steamer "Jethou" with 5,830 tons of coal did not arrive here on November 15th, 1907?

A. What is the name of that steamer?

Q. The "Jethou"? A. Yes, sir.

Q. She came consigned to you?

A. Yes, sir.

Q. State whether or not the British steamer "Riverdale" arrived here on December 20th, 1907, with 5,898 tons of coal.

A. She came consigned to us.

Q. Have you any information as to when she discharged?

Mr. DENMAN.—The "Riverdale"?

Mr. HUTTON.—Yes.

(Testimony of J. J. Moore.)

A. No, sir, I could not tell you. I can get it.

Q. The British steamer "Campbell"?

A. She came to us.

Q. With 5,500 tons of coal. Do you know whether that is correct or not?

A. She came to us. I could not tell you about the figure.

Q. State whether or not she did not arrive on January 10th, 1908?

A. I could not tell you that.

Q. The British bark "Battle Abbey"?

A. She came to us.

Q. She came consigned to you?

A. Yes, sir.

Mr. DENMAN.—What date is that?

Mr. HUTTON.—January 14th, 1908.

A. I cannot give you the date.

Q. The American schooner "J. H. Lunsmann"?

A. She came consigned to us.

Q. You know that the "J. H. Lunsmann" arrived after the "Columbia" and discharged about a month before her?

A. I could not tell you that.

Q. Did I understand you to say that you told Captain Nelson that he would be docked on the following Monday?

A. On the following Monday?

Q. What did you say? I did not catch your answer?

A. I told him he would probably have to wait three or four weeks before he was docked.

(Testimony of J. J. Moore.)

Q. Is it not a fact that some of this coal that came in the steamers I have mentioned is now stored in San Francisco in store-ships; has been taken out of the vessels and put in ships and kept there on account of the consumption not being up to the amount of coal brought into the port during that time?

A. I cannot answer that.

Q. You have no information at all about it?

A. Not any.

Q. Have you any information that there is at this time about 100,000 tons of coal on storage in ships in San Francisco that was brought in between those months?

A. I know there is a good deal of coal, but the amount I could not state.

Q. That is between the months of the arrival of these steamers?

A. I could not answer that question. After we sell the coal we lose all track of it. It is not ours. We have no coal. After we sell the coal we have no track of it. I could not answer what time it came in. I know it is there.

Redirect Examination.

Mr. DENMAN.—Q. The various coal cargoes referred to here as having come in prior to the arrival of this vessel, do you know whether or not any of those vessels were discharging at the time that this vessel was waiting for discharge in the port?

A. If the coal was sold to the Western Fuel Company they would not be discharged while that ship

(Testimony of J. J. Moore.)

was here. If it was sold to some one else who could take in the ships it possibly may be discharged.

Q. All that can be obtained from your office data?

A. Yes, sir.

Q. You have been engaged in the coal business, you say, for 25 years? A. Yes, sir.

Q. Was the amount of coal that you ordered and came in on those vessels at that time an unusual or extraordinary amount for you in your business to import?

A. Of late years, yes. Since the discovery of oil, the importation of coal has not been so heavy until two years ago?

Q. Then there was an increase in the quantity of coal?

A. A large increase in the importation of coal.

Q. What was the reason for that?

A. Principally because they could not get cars to bring coal from the East. We were shipping coal into Nevada and other places where we never shipped before. Oakland, San Francisco and other places that did get coal *from from* Wyoming did not get any coal during the shortage of cars.

Q. That shortage existed subsequent and prior to the great earthquake here? A. Yes, sir.

Q. The shortage had begun to exist prior to the fire? A. I think it had.

Q. The fire conditions, coupled with crop conditions East, increased the shortage of coal?

A. Yes, sir.

(Testimony of J. J. Moore.)

Q. That condition had existed you say for about two years back? A. Two or three years.

Q. This importation was not extraordinary in amount for the importation covering that period of two or three years?

A. No, sir. The winter before last coal was almost impossible to get, but when the depression came about a year or fourteen months ago the consumption of coal dropped off probably 200 per cent.

Recross-examination.

Mr. HUTTON.—Q. Is it not a fact, Mr. Moore that the shortage of coal during the winter of 1906 lasted about a month or a month and a half?

A. 1906?

Q. Yes. A. It lasted all the winter.

Q. That led a great many people to install oil-burning apparatus?

A. I think not oil. A good many people for house purposes installed gas. I think the oil burning did not change very much. Nearly all the oil burners were already installed.

Q. There was a large increase in the consumption of oil in San Francisco and the Pacific Coast, in the last two or three years.

A. That is because they are spreading out. They are sending oil to Portland, and Alaska, and various other places.

Q. In local consumption there has been a large increase.

A. I should not have thought so.

(Testimony of J. J. Moore.)

Q. Don't you know during the winter of 1906 on account of the scarcity of coal that made the Gas Company to install a very large number of gas burners, and the people to get gas stoves in their house?

A. I have heard so.

Q. That led to a decrease in the consumption of coal.

A. That would be a very small amount in comparison with what we lost through the fact of the let up in the shortage of cars. That was the principal factor in the loss in the consumption of coal.

Q. That led to this extraordinary increase in the importation at that time? A. Yes, sir.

Further Redirect Examination.

Mr. DENMAN.—Q. I do not think you understood that, Mr. Moore. As I understand, the shortage of cars led to the increased importation. Then the depression came and you had an excess car supply, and that caused the congestion of coal in San Francisco. A. That was my answer.

[Testimony of William Mainland, for the Defendant.]

WILLIAM MAINLAND, called for the defendant, sworn.

Mr. DENMAN.—Q. What is your business, Mr. Mainland?

A. Clerk and Secretary to J. J. Moore & Co.

Q. How long have you been there?

A. A little over ten years.

Q. What position do you hold there? What is your function there?

(Testimony of William Mainland.)

A. Cashier, and I attend to the coal vessels.

Q. Have you a record of vessels arriving consigned to J. J. Moore & Co. from, say, a period of two months prior to the 15th of January, 1908?

A. Yes, sir.

Q. On the 15th of January, was there any vessel which had arrived prior to that time discharging at any dock in the port of San Francisco?

A. Repeat that question?

Q. Was there any vessel discharging on the 5th of January that had arrived in San Francisco, prior to that time?

A. No, sir; there was no ship consigned to J. J. Moore & Co. discharging then.

Q. No matter consigned to J. J. Moore & Co.—

A. Not discharging coal.

Q. Not discharging coal at that time?

A. No, sir.

Q. Does your record show when the “Strathnarin” was discharged?

A. The “Strathnarin” was discharged on the 17th of October.

Q. When was the “Borderer” discharged?

A. The “Borderer” was discharged on the 4th of November.

Q. And the “Valdivia”?

A. On the 13th of November.

Q. And the “Craighall”?

A. On the 23d of November.

Q. And the “Jethou”?

A. Midnight of the 30th of November.

(Testimony of William Mainland.)

Q. And the "Riverdale"?

A. On the 3d of January.

Q. And the "Camphill"?

A. On the 13th of February.

Q. And the "Battle Abbey." When was she discharged?

A. She has got some of her cargo in her yet. She had coke and coal. Most of the coal is in her yet.

Q. Do you know when she was discharged?

A. She finished her coke on the 6th of February.

Q. Whereabouts?

A. At the Selby Smelting Works, Vallejo Junction.

Q. Did she discharge in the port of San Francisco at all?

A. She discharged 60 tons into a barge.

Q. Into a barge? A. Into a lighter.

Q. She did not fill the docks at *any* during this period? A. No, sir.

Q. When was the "Lunsmann" discharged?

A. The "J. H. Lunsmann" finished discharging on March the 4th.

Q. Where was the "Lunsmann" discharged?

A. She discharged on Washington's Birthday 324 tons at Folsom Street wharf to lighten her up so that she could proceed up Oakland creek to discharge at the Howard bunkers in Oakland.

Q. She was not discharged in San Francisco except for that lightening? A. That is all.

(Testimony of William Mainland.)

Q. What is the custom of the port in regard to the method of discharging vessels where several vessels arrived, and are to be discharged at a certain dock?

A. They take their turn as far as I have observed.

Q. How long have you been in the business?

A. A little over ten years.

Q. In what branch of the shipping business?

A. The coal department mostly. Most of my duties have been in connection with coal vessels.

Q. You are familiar with the method of discharging coal vessels? A. Yes, sir.

Q. What is that method with regard to the succession in which vessels are discharged where several are waiting discharge at a certain dock or bunker?

A. Sailing vessels generally take their turn. Steamers are given preference over sailing vessels.

Q. Steamers are given preference over sailing vessels? A. Yes, sir.

Q. Is that the custom of this port?

A. As far as I have observed, that is the custom.

Q. That has been so over this period of years that you have described?

A. Yes, sir, I think so.

Cross-examination.

Mr. HUTTON.—Q. Now, Mr. Mainland, I think your name is, the “J. H. Lunsmann” arrived here on January 21st, 1908, did she not?

A. Yes, sir, she did.

(Testimony of William Mainland.)

Q. She arrived after the "Columbia," and discharged before?

A. Yes, sir, she arrived after.

Q. With respect to the "Battle Abbey": She discharged some coal on a lighter, and then she discharged coke, and don't you know that after she discharged coke they put some of her coal back into her again, and she has now it aboard of her as a store ship?

A. No, sir, they did not put it back. It was left in her. It was not discharged.

Q. You know that the great trouble at that time was that the bunkers were crowded. They could not get the coal away from the bunkers, so that the ships could not get alongside to put it in.

A. In regard to the "Battle Abbey"?

Q. That was the condition that prevailed. They had to provide store ships to get the coal out of the bunkers?

A. So I understand.

Q. There is a great deal of that coal in port now that came about that time?

A. I think there is.

Q. So the real difficulty was not the fact of an excessive quantity of ships but the difficulty in getting rid of the coal. That is the way you understand it?

A. That is what I think was the trouble.

Q. What information have you, Mr. Mainland, about custom. You never heard any one tell you that was the custom, did you?

(Testimony of William Mainland.)

A. We have had a good many vessels in. I observed the way they generally dock them. They take the first vessel in.

Q. That is the way your firm has been in the habit of doing? A. Yes, sir.

Q. You always, as a rule, unload them within the lay days specified in the charter-party, do you not; that is up to the time of this overcrowding or overplus of coal here. You always manage to unload them in the lay days?

A. We generally did.

Q. Is it not a fact that the "Camphil!" went alongside of the dock on February 6th, and finished discharging on February 14th?

A. She finished on the 13th.

Q. Your firm brought in between October 6th and January 21st about 45,000 tons of coal into this port, did it not?

A. I have not the figures handy here.

Q. Mr. Moore was unable to give them. He said you had them. Probably if I read this off you will be able to remember? A. Yes, sir.

Q. The "Strathnarin," 6,007 tons; is that approximately correct? A. That is correct.

Q. The "Borderer," 5,893 tons, arriving October 19th, 1907. Is that approximately correct?

A. 5,893 tons, that is correct.

Q. The "Valdivia," 5,938 tons, arriving October 29th, 1907. Is that approximately correct?

A. Arriving October 29th.

(Testimony of William Mainland.)

Q. The "Craighall," 5,630 tons, arriving November 9th, 1907. Is that approximately correct?

A. That is correct.

Q. The "Jethou," 5,830 tons, arriving November 15th, 1907. Is that approximately correct?

A. That is approximately correct.

Q. The "Riverdale," 5,898 tons, arriving December 20th, 1907. Is that approximately correct?

A. That is correct.

Q. The "Camphill," 5,500 tons, arriving January 10th, 1908. Is that approximately correct?

A. That is correct.

Q. The ship "Columbia" with 2,220 tons, arriving January 14th, 1908. Is that approximately correct too? A. Yes, sir.

Q. And the "J. H. Lunsamm" with 1760 tons, arriving January 21st, 1908. That is approximately correct, is it not?

A. That is approximately correct.

Redirect Examination.

Mr. DENMAN.—Q. All that coal was sold prior to arrival?

A. All that coal was sold prior to arrival.

Mr. DENMAN.—When Mr. Hutton brings his further evidence I will have to meet that, if your Honor please, and bring some evidence to rebut the testimony of the captain as to the condition of the bunkers. On those days in which he suggested there had been a vacancy at the docks, we will show that the docks were continuously occupied by vessels prior to the arrival of the vessel.

(Testimony of William Mainland.)

Mr. HUTTON.—The only thing I want to put in is the rainy days. I have that in my office.

Mr. DENMAN.—Q. Mr. Mainland, is a part of your duties to keep account of the weather to determine whether or not vessels can be discharged on various days, and to compute lay days?

A. It is.

Q. Can you give the condition of the weather in the days succeeding the 15th of January, 1908.

A. Yes, sir, I can.

Q. What was the condition of the weather on the 18th day of January? A. It was rainy.

Q. What does that mean?

A. It means that rain fell during the day. It is customary when it is raining not to count it as a lay day.

Q. That is rain sufficient to interfere with the unloading of the ship? A. Yes, sir.

Q. How about the 20th?

A. It was raining on the 20th.

Q. And in the same quantity? A. No, sir.

Q. I mean in sufficient quantity to interfere on those days?

A. In a sufficient quantity to prevent it being called a lay day as a customary way of figuring it.

Q. What quantity is that?

A. We generally figure if it is raining at all it is not counted as a lay day.

Q. How about the 23d day of January?

A. It was raining on the 23d.

Q. On the 24th day of January?

(Testimony of William Mainland.)

A. Also raining.

Q. How about the 29th day of January?

A. It was raining on the 29th.

Q. The first day of February?

A. It was raining on the first day of February.

Q. And the 4th of February?

A. Also raining.

Q. Have you any further account of the weather after the 4th of February?

Mr. HUTTON.—That does not cut any figure.

A. I took a memorandum off of my calendar that I put the rainy days on after that; the 18th, 20th, 23d, 24th, Feb. 1st, 4th, 28th, 29th, March 2d, 4th, and 5th, were rainy days.

Recross-examination.

Mr. HUTTON.—Q. Where did you get that information from? A. The rainy days?

Q. Yes. A. I took it off my calendar.

Q. You took the information in your office?

A. In my office, yes.

Q. Did you ever at any time during those days go down and see whether they were working coal or not? A. I did not.

Q. You never did? A. No, sir.

Q. Sometime they worked coal down there when you would not care about working as a clerk or Secretary? Is that not so?

A. I am sure I don't know.

Q. You do not know as a matter of fact whether they worked coal on those days or not, because you did not go down to see? A. I did not.

(Testimony of William Mainland.)

Q. You did not at any time go down and see during this period whether any of these docks were full, or whether they were empty?

A. No, sir, I did not.

Further Redirect Examination.

Mr. DENMAN.—Q. Your testimony is simply that those were rainy days, and rainy days sufficient to interfere with the unloading of coal, as you understand it, in the practice of unloading coal here in San Francisco? That is correct is it?

A. That is correct.

(An adjournment is here taken until Monday, November 9th, 1908, at 10 o'clock A. M.)

[Testimony of William Nelson for the Libelant (Recalled).]

Monday, November 9th, 1908.

WILLIAM NELSON, recalled.

Mr. HUTTON.—Q. From the 15th of January up to and including the 14th day of February in this present year, did you keep any memorandum of the working days on the wharves of San Francisco?

A. Yes, sir.

Q. Did you keep it in writing?

A. Yes, sir.

Q. In your own handwriting?

A. Yes, sir.

Q. Have you got it with you?

A. Yes, sir.

Q. Can you, without consulting that, testify now what were working days, and what were not?

(Testimony of William Nelson.)

A. I could not.

Q. You need that for the purpose of refreshing your memory?

A. Yes, sir, I could not carry that in my head.

Q. Take the paper, and I will give you the days, and will ask *you tell* us the character of weather on each day. On the 15th of January, 1908—these will all be 1908—was that a fine day, or a rainy day?

A. A fine day.

Q. On the 16th of January, what character of day was that?

A. We worked on the bunkers that day.

Q. Weather fine? A. Yes, sir.

Q. The 17th day of January.

A. Worked on the bunkers all day.

Q. The 18th day of January.

A. Rained all day. No work on bunkers.

Q. The 19th day of January, I think was Sunday.

A. The 19th day of January was Sunday.

Q. The 20th.

A. It was fine weather until 2 P. M. and rained after 2 P. M.

Q. Did they work in the forenoon or not?

A. Yes, sir, up to 2 P. M.

Q. I will interrupt you just for a moment. What are the working hours per day on the wharves in San Francisco?

A. From 7 to 5, or from 8 to 5. I would not be sure of that. I would not be sure if it was from 7 to 5, or from 8 to 5.

Q. Any break for dinner?

(Testimony of William Nelson.)

A. Yes, sir, they have one hour for dinner.

Q. What hour, 12 to 1?

A. 12 to 1. Yes.

Q. Now, the 21st. What character of day was that?

A. Worked on the bunkers all day.

Q. The 22d.

A. Worked on the bunkers all day.

Q. The 23d.

A. Rained half a day until 12 noon.

Q. How about the afternoon?

A. Worked in the afternoon.

Q. The 24th.

A. Worked all day on the bunkers.

Q. The 25th.

A. Rained in the forenoon. Worked in the afternoon on the bunkers.

Q. The 26th, I think was Sunday.

A. The 26th was Sunday.

Q. The 27th.

A. Worked all day on the bunkers.

Q. The 28th.

A. Bunkers worked all day.

Q. The 29th.

A. Worked until noon. Rained in the afternoon.

Q. No work in the afternoon?

A. No work in the afternoon.

Q. The 30th.

A. Worked all day on the bunkers.

Q. The 31st.

A. Worked all day on the bunkers.

(Testimony of William Nelson.)

Q. February 1st.

A. Rained all day. No work on the bunkers.

Q. The 2d was Sunday.

A. The 2d was Sunday.

Q. The 3d. A. Worked all day.

Q. The 4th.

A. Worked half a day—in the afternoon. No work in the forenoon.

Q. Was that half a day, or a quarter of day?

A. Half a day.

Q. The 5th. A. Worked all day.

Q. The 6th.

A. Worked all day on the bunkers.

Q. The 7th. A. Worked all day.

Q. On the 8th.

A. On the 7th, the lay days expired.

Q. I do not care about that. On the 8th.

A. Worked all day.

Q. The 9th was Sunday.

A. The 9th was Sunday.

Q. The 10th. A. Worked all day.

Q. The 11th. A. Worked all day.

A. The 12th. A. Worked all day.

Q. The 13th.

Mr. DENMAN.—We admit it was clear weather up to the 23d.

Mr. HUTTON.—Q. You know the schooner “J. H. Lunsmann”?

A. Yes, sir.

Q. A sailing vessel? A. Yes, sir.

Q. Prior to the discharge of this cargo, at the time rather that the “Columbia” went alongside of

(Testimony of William Nelson.)

the dock, did you ever receive any bill of lading from anyone? A. No, sir.

Q. How long did it take to discharge *to discharge* the coal upon this occasion?

A. About two days and a half, I think. I would not be sure of the exact time; something like that; about two days and a half.

Q. You think she was discharged inside of three days from the commencement.

A. I think so.

Q. With respect to the two corporations mentioned in the libel here, A. Anderson & Co. and Boole & Co., you have done business with them?

A. Yes, sir.

Q. They are both corporations?

A. Both corporations.

Cross-examination.

Mr. DENMAN.—Q. You say that there was work done on the bunkers; how do you know that?

A. Because I went down and looked.

Q. Did you go down to the Western Fuel bunkers?

A. Where I can see them, yes.

Q. On each one of these days?

A. Yes, sir, I went down every day.

Q. You wanted to keep track of the weather?

A. To keep track of my lay days.

Q. You are sure they were working on those bunkers during those days?

A. I am sure they were working on those bunkers during those days. If it was raining, they were

(Testimony of H. Larsen.)

working on some other vessels. If the bunkers were not working, they were working on other vessels.

Q. You are satisfied that during these days, from January 15th on until the end there, that they were working either on those bunkers, or you went near enough to see that the weather condition was such that they could work there?

A. If the bunkers could not work, there were other vessels working around the wharves discharging coke or other cargoes.

Q. You satisfied yourself as to the bunkers, and then, if there was not anybody working there, you looked at the other vessels.

A. I looked at the other vessels.

Q. You mean the Western Fuel bunkers?

A. Yes, sir, the Western Fuel bunkers.

[**Testimony of H. Larsen, for the Libelant (Recalled).**]

H. LARSEN, recalled.

Mr. HUTTON.—Q. How many days did it take to discharge the coal when they commenced working on her?

A. About two and a half days.

Q. Prior to the time that she was discharged, or at any time after your arrival to San Francisco, on the ship in question, were you ever presented with any bill of lading by anyone? A. No, sir.

Q. You went according to the instruction, put the vessel alongside the dock, and the coal was taken out of her? A. Yes, sir.

Q. You got no bill of lading at all?

(Testimony of Thomas A. Hender.)

A. No, sir.

Mr. DENMAN.—That is all.

[**Testimony of Thomas A. Hender, for the Libelant.**]

THOMAS A. HENDER, called for the libelant, sworn.

Mr. HUTTON.—Q. You are the Chief Wharf-inger in San Francisco, are you not?

A. Yes, sir.

Q. Have you got with you a list of the vessels that were discharging coal, *and* Howard and Folsom and Mission wharves between January 15th, 1908, and March, 1908? A. Yes, sir.

Q. Please turn to Howard No. 2. That is a coal wharf, is it not, where they discharge coal?

A. Yes, sir.

Q. Howard No. 2? A. Howard No. 2.

Q. I will just ask you what vessels were there, that is, in January. I do this so that I will not break into your list there.

A. My wharfinger did not segregate the dates at that particular wharf.

Q. I should like to segregate the dates.

A. I have the list of the vessels, but not the particular dates on which they were there.

Q. Your subpoena required you to give the dates?

A. No, sir, it said from January 16th to March 16th, in my subpoena.

Mr. DENMAN.—You can take whatever time the Court will allow to get the exact dates.

Mr. HUTTON.—I have an exact list from the harbor *commissioners given* the dates.

(Testimony of Thomas A. Hender.)

The WITNESS.—On the other two wharves I have the respective dates. On this one it is an oversight.

Mr. HUTTON.—Q. Then we will take Mission No. 2. A. Yes, sir.

Q. From the 19th to the 20th of January, what vessels were there, that is at Mission No. 2?

A. Nothing between those dates. The first date I have is January 23d, the “Cecil.”

Q. Was there any vessel there between the 20th and the 23d? A. No, sir.

Q. None?

A. Not from the report of my wharfinger.

Q. Between the 9th and 20th, the “Bankfield” was there, was she not? A. Not on my list.

Q. From the 20th to the 23d, there was no vessel there? A. No, sir.

Q. From the 23d to the 31st, the “Cecil” was there, was she not? A. Yes, sir.

Q. From the 1st of February to the 5th, what vessel was there?

A. I have not any on my list.

Q. Not any?

A. Commencing on the 6th, is the “Camphill.”

Q. Until the 13th. Is that right?

A. I have February 6th. I was not under the impression that you wanted these particular dates from the time they arrived until they departed. I will have to get that.

Q. If you have not the information, I cannot use you. I am very sorry. I wanted those particular

(Testimony of Thomas A. Hender.)

dates. I have a list of them from the Harbor Commissioner.

The COURT.—Are you through with the witness?

Mr. HUTTON.—Yes. Mr. Denman and myself will go over this list, and probably agree on it later, so as to save any further trouble.

Mr. DENMAN.—That is all.

Mr. HUTTON.—I will call on you for that bill of lading, Mr. Denman.

Mr. DENMAN.—I have not the bill of lading, but I agree it is in the form that is pleaded.

Mr. HUTTON.—In whose possession is it?

Mr. DENMAN.—I cannot tell you.

Mr. HUTTON.—Have you got the contract?

Mr. DENMAN.—Yes. There it is. (Handing it.)

[**Testimony of William Mainland, for the Libelant
(Recalled).**]

WILLIAM MAINLAND, recalled.

Mr. HUTTON.—Q. You testified, did you not, at the last hearing, that this coal on the “Columbia” was sold prior to arrival?

A. Yes, sir.

Q. Sold under a written contract?

A. Yes, sir.

Q. Is that the contract? (Handing.)

A. That is the contract.

Mr. HUTTON.—I desire to offer that in evidence, if your Honor please, as Libelant’s Exhibit “H.”

(The paper is marked Libelant’s Exhibit “H.”)

(Testimony of William Mainland.)

Cross-examination.

Mr. DENMAN.—Q. This contract is dated November 24, 1906, and it *calls* on its face for 30,000 or 40,000 tons to be delivered in 1906 and 1907, that is to say, there would be fourteen months' time during which to deliver between 30,000 and 40,000 tons of coal to the Western Fuel Company?

A. Yes, sir.

Q. I desire to ask you, what vessels had delivered coal to the Western Fuel Company under this contract subsequent to November 24th, 1906? First, let me ask you what vessels did deliver coal to the Western Fuel Company after November 24th, 1906, whether under this contract or any other contract. Have you got it there?

Mr. HUTTON.—Under any other contract would be immaterial, if your Honor please.

Mr. DENMAN.—We are running it down, that is all.

A. I will have to look it up. I have not got it tabulated so that I can find it.

Q. Do you remember preparing that statement for me (handing)?

A. Yes, sir.

Q. Is that a correct tabulation from your records?

A. That is correct.

Q. Refresh your memory from that and tell me what vessels after November 24th—

The COURT.—Just introduce that in evidence. It covers the whole thing, does it not?

Mr. DENMAN.—Yes.

(Testimony of William Mainland.)

Mr. HUTTON.—I desire to object to anything that was not delivered under this particular contract as immaterial.

The COURT.—I will consider that later. It shortens his testimony.

(The paper is marked Defendant's Exhibit "1.")

Mr. DENMAN.—Q. Do you know whether the steamer "Camphill" was delivered under this contract, or some other contract?

A. The "Camphill" was discharged in February, between the 9th and 13th under a separate contract.

Q. Not under that contract?

A. Not under that contract.

Q. Were any vessels discharged at the Western Fuel docks in San Francisco other than showed by that statement that you gave to me, during those periods mentioned.

A. During those periods, no.

Redirect Examination.

Mr. HUTTON.—Q. You do not mean by that that there were no vessels at all discharged?

A. I mean for account of J. J. Moore & Co.

Q. I call your attention to this memorandum that you just handed to Mr. Denman: "S. S. 'Craighall.' Arrived November 9th, 1907. Commenced discharge at Oakland Long Wharf, November 12th, 1907." That is over the Bay of San Francisco. They discharge coal there also, don't they?

A. She discharged over there.

(Testimony of William Mainland.)

Q. The "Jethou," she was discharged at Beale Street, was she not? A. Yes, sir.

Q. That is not a Western Fuel dock?

A. No, sir.

Q. The "Riverdale" also discharged at Beale Street. That is not a Western Fuel dock?

A. No, sir.

Q. The "Camphill" was discharged at Mission Street? A. Yes, sir.

Mr. HUTTON.—I have no objection to that paper.

Recross-examination.

Mr. DENMAN.—Q. This "Craighall," November 9th, cargo sold to the Western Fuel Company, to whom was that delivered at Oakland Long Wharf?

A. To the bunkers of the Southern Pacific Company.

Q. And sold to the Southern Pacific Company ultimately? A. Yes, sir.

Q. Those are private bunkers, are they not?

A. The Southern Pacific Company's private bunkers.

Q. For consumption of the Southern Pacific in its transportation business?

A. Mostly used by the Southern Pacific Company.

Mr. HUTTON.—That is our case, if your Honor please.

[**Testimony of F. C. Mills, for the Defendant.**]

F. C. MILLS, called for the defendant, sworn.

Mr. DENMAN.—Q. What is your business?

A. Superintendent for the Western Fuel Company.

(Testimony of F. C. Mills.)

Q. What business is the Western Fuel Company engaged in?

A. In the coal business, and building material.

Q. How long have you been engaged in the coal business yourself?

A. In the neighborhood of twenty years.

Q. In the port of San Francisco?

A. Yes, sir.

Q. And how long have you been connected with the Western Fuel Company?

A. Ever since they started.

Q. How long is that?

A. Go on about five years. I would not be positive about that.

Q. Have you had business from time to time with J. J. Moore & Co. A. I have.

Q. Of what character?

A. Simply giving data from them in reference to their ships that we had taken coal from them.

Q. That is, from time to time, you bought cargoes of coal from them? A. Yes, sir.

Q. Do you recollect the conditions as to the coal trade in January, of this year?

A. What do you mean?

Q. You were in charge of the docks in January, of this year? A. Yes, sir.

Q. Do you recollect receiving a cargo of coal from J. J. Moore & Co. in the month of February, from the steamer "Camphill"?

A. I remember the steamer "Camphill," yes.

Q. Was she discharged about that time?

(Testimony of F. C. Mills.)

A. I should have to look up my records. I cannot call it to my mind.

Q. Have you got it there?

A. We had so many ships there that I cannot remember just the dates on them. About what time do you think it was?

Q. About February 7th or 8th.

A. The "Camphill" commenced on the 6th of February to discharge.

Q. What kind of coal did she have, do you know?

A. It was Australian coal.

Q. House or steam coal? A. Steam coal.

Q. Do you know when the "Columbia" was discharged? Look at your records about the 17th of March?

A. The "Columbia" commenced to discharge on March 18th and finished on the 20th.

Q. Captain, what is the custom of the port with regard to the discharge of colliers where they have arrived in too great a number to be discharged at once at the coal docks of the port.

Mr. HUTTON.—I object to that, if your Honor please, as entirely immaterial. You cannot vary a written contract by a custom.

The COURT.—Let the question be answered.

Mr. HUTTON.—I will take an exception.

A. Colliers always take preference over sail.

Mr. DENMAN.—Q. That is to say, steam vessels take preference over sail.

A. Steam vessels take preference over sail.

(Testimony of F. C. Mills.)

Q. What, with regard to the order in which each in its class is discharged?

A. They try to discharge them according to their arrival.

Q. Steam before sail, and each class in the order of its arrival? A. Yes, sir.

Q. That is the custom of the port?

A. That is the custom of the port, and on account of having to have the steam to take charge of other steamers going out.

Q. How long has that been the custom of the port?

A. I have done it ever since I have been in the business there.

Q. That is some twenty years in this port?

A. About twenty.

Q. Are you familiar with the custom in any other ports? A. No, sir, I am not.

Q. What was the reason for the delay in the discharge of the "Columbia"?

A. The delay was on account of the congested condition of our bunkers and storage places, and the numbers of steamers arriving in here one after the other.

Q. Then I am to understand that the vessel was delayed by steamers who had preference over her, or by the congested condition of the bunkers until the time that she was discharged? A. Both.

Q. What was the reason for the congested condition of your bunkers?

A. On account of no demand for the coal.

(Testimony of F. C. Mills.)

Q. Why was that?

A. The condition that occurred all over the country. In the first place, there were big shipments of coal coming out here from the western states which had not come out for two or three years. We had big orders previous to that from the country which all slumped off.

Q. Where does the bulk of this coal come from that you use in this port?

A. Australia and British Columbia.

Q. How long a time ahead do you have to make provision for the coal supply?

A. We have to figure a year ahead.

Q. The coal that you brought into San Francisco that congested this harbor in January and February and March of this year had been ordered somewhere a year prior to that time?

A. Yes, sir.

Q. What can you say on the condition of the market at the time the coal was ordered as to justifying the amount of coal that you then ordered?

A. There was a big scarcity of coal here the previous year, and a big demand all through the country. Those demands were larger on account of no supplies coming from the western States.

Q. What was the effect of the depression of 1907 on the supply of coal coming from the Rocky Mountain States?

Q. There was no business on the railroads. They had plenty of cars to spare and brought coal in which they had not done previously.

(Testimony of F. C. Mills.)

Q. For two or three years, as I understand, they had not done that, and your coal trade had built up in the towns of Nevada, Arizona and middle California?

A. Yes, sir, there were big demands from all those points for coal from this point.

Q. This coal ordered for a year prior to January, 1907, was to meet the business that had grown up in those cities?

A. In those cities and along the coast.

Q. As I understand, the Australian coal could not compete with the Middle Western coal when they began to throw them in along the fall of 1907, and the early portion of 1908.

A. I did not understand your question there. The coal coming in from both points, there was a much larger supply of coal here than there was a demand.

Q. You have spoken of the rule of discharge at your bunkers, and the custom of the port. Had J. J. Moore & Co. any relationship with your company that could force you to change that rule on behalf of its particular vessels?

A. No, sir, not that I know of.

Q. There was no method by which they could have procured an earlier discharge from you for the "Columbia"?

A. No, sir.

Q. That custom was the reason why you could not permit the "Columbia" to dock earlier than that date?

(Testimony of F. C. Mills.)

A. That and the congested condition we were in

Q. What is a weather working day in this port?

Mr. HUTTON.—I submit that that is a matter of law.

The COURT.—I will hear what he says about it.

A. From 8 to 5. In the last month, they have changed back to 7 to 5. It used to be some years ago 7 to 5. Just after the earthquake the Unions forced us to make it from 8 to 5.

Mr. DENMAN.—Q. What is the condition of the stevedoring business in this port. Is there a Union of Stevedores? A. Yes, sir.

Q. Can you get any stevedores outside of that?

A. You can get non-union men, yes, but you cannot do your work with them.

Q. Is it not practical to use them?

A. It is not practical to use them.

Q. What is the effect of rain on obtaining a supply of stevedores to discharge a vessel supposing the morning is rainy?

A. They simply will not go to work.

Q. Can you procure their return during the day?

A. That depends entirely; if the rain stops in a few hours, you can; otherwise they will drift away, and you cannot get them.

Q. You cannot collect them?

A. No, sir, they get around saloons, and drift off and go home.

Q. Have you a list there of the days on which it was possible to discharge in San Francisco between January 15th and March 17th?

(Testimony of F. C. Mills.)

A. I made up a list. I do not think I could get that from my book.

Q. You have not got that list?

A. No, sir, not of the rainy days altogether. I made up a list of the rainy days.

Q. Is that the list that you made up (handing)?

A. Yes, sir.

Q. Is that correct? A. That is correct.

Q. Could you discharge coal on any of those days marked "rainy days"?

A. You could, providing you could get the stevedores to work for you.

Q. Could you, under the condition under which the Unions were working? A. No, sir.

Q. That is from your record?

A. Yes, sir.

Mr. DENMAN.—We offer that in evidence.

(The paper is marked Defendant's Exhibit No. 2.)

Cross-examination.

Mr. HUTTON.—Q. From what did you make this up?

A. From the rainy days. The port rainy days I got from the Weather Bureau.

Q. That is, since the last week or two, you have gone to the Weather Bureau and got this data. Is that correct?

A. No, sir, I got that a long while ago.

Q. When did you get it?

A. I could not tell you just the date. It was a long while ago that I got it.

(Testimony of F. C. Mills.)

Q. You have not any original information or any memoranda made by yourself at that time, have you?

A. I have, partially, yes. I do not know I have got it in full.

Q. I will ask you about this paper. On January 17th, it says, "Raining." Would you say that it was raining all day or half a day, or what?

A. I would not say it was raining all day. That I could not remember.

Q. On January 20th, it says, "Raining." Would you say it was raining all day?

A. I could not say that.

Q. You would not say that with reference to any of these?

A. No, sir, I could not state the number of hours during that time that it was raining.

Mr. HUTTON.—I have no objection, if your Honor please, to this going in for what it is worth, but I *do think* it is worth very much.

Q. Have you a list of the vessels that discharged at Mission No. 2 during the month of January, 1908?

A. I think I can give it to you from my book. I have not the list made up. I have got them noted here. I have got them down. All that I put down as a rule in my book is, when a ship comes in to the dock, the date of arriving at the dock and discharge.

Q. To facilitate the matter, I will take Mission No. 2. The "Bankfield" was from the 9th to the 20th of January?

A. The "Bankfield" commenced on the 11th.

(Testimony of F. C. Mills.)

Q. She went to the dock on the 9th?

A. There might have been congested condition. I have got down the time it commenced working.

Q. The "Bankfield" went there, you were unable to take the coal on account of the bunkers being filled, and you did not work for a couple of days?

A. Possibly. She did not commence until the 11th. If she was there previous to that, waiting, I do not remember.

Q. She left on the 20th?

A. Yes, sir, we finished her on the 20th.

Q. The next vessel that arrived there was the "Cecil" on the 23d?

A. Yes, sir, the "Cecil" commenced on the 24th.

Q. She arrived at the dock on the 23d, and she stayed until February 5th, did she not?

A. January 5th she finished — February 5th, I meant to say.

Q. The "Camphill" commenced on the 6th stayed until the 13th, did she not?

A. She commenced on the 6th of February, and she finished on the 12th.

Q. And left on the 13th?

A. That I could not tell you.

Q. There was no other vessel arrived there discharging until the 17th, was there Mr. Mills?

A. The 17th?

Q. That was the "River Forth"?

A. The "River Forth."

Q. She stayed until the 28th?

A. The "River Forth" finished on the 27th.

(Testimony of F. C. Mills.)

Q. And left on the 28th? A. Possibly.

Q. The next vessel to arrive was the "Gymeric," or "Semeric" on the 4th of February.

A. The "Gymeric," the 4th of March.

Q. Kindly turn to Howard No. 2.

A. You will have to give me the name of the vessel.

Q. I will give you the name of the vessel, the "M. F. Plant" was there from the 9th to the 15th, was she not? A. Of what month?

Q. January.

A. Yes, sir, she was there on the 9th.

Q. She was there on the 15th also, was she not?

A. No, sir.

Q. The "M. F. Plant" takes about one day to discharge, or less?

A. She comes down with 2 or 300 tons.

Q. She comes from Coos Bay, and you discharge her in a day?

A. She was not there on the 5th.

Q. With respect to the "Hornelen."

A. What date was that?

Q. She arrived on the 19th of January.

A. The "Hornelen" docked on the 21st.

Q. There was nothing there between the 15th and 21st, was there?

A. Possibly not. Possibly the bunkers were full and congested, and we could not put anything there.

Q. You say she docked on the 21st. When did she leave?

A. She went in the stream on the 18th.

(Testimony of F. C. Mills.)

Q. There was nothing there at Howard No. 2 from the 18th until the 31st when the "Yeddo" arrived?

A. Yes, sir, the "Yeddo" was there on the 31st. On the 30th, in fact, she went in.

Q. I think she stayed until the 9th of February, did she not? A. Until the 7th.

Q. There was nothing there, was there, at that dock, from the 7th until the 14th, except the "M. F. Plant," which was there on one day, the 11th?

A. The 11th of February?

Q. Yes.

A. The "Plant" was not there then.

Q. When did the French bark "La Rochefacauld" arrive? She arrived on the 14th, did she not?

A. I have not got that down. She did not come to us. I have not got that.

Q. Do you know of any vessel that was at Howard No. 2 after the "Yeddo" left, Mr. Mills, that is during the month of February?

A. In the month of February?

Q. Yes.

A. I guess our bunkers were full at that time. I do not see anything there. There was nothing there.

Q. I will just go to Folsom No. 2; if you will kindly take the "S. S. Fordenskygold," a Norwegian steamer, I should judge. A. At what date?

Q. The 9th of January.

A. That is the "Turgenskygold."

(Testimony of F. C. Mills.)

Q. I guess that is the word. She went there on the 6th of January? A. Yes, sir.

Q. And she left on the 9th?

A. She left on the 10th to go to Oakland.

Q. The "Finn" was the next vessel that arrived on the 14th.

A. Arrived in port, do you mean?

Q. No, arrived alongside of the dock. I have reference to the dock when I speak about these vessels.

A. The 14th.

Q. She stayed until the 23d? A. The 22d.

Q. The "Indra" took her place on the 23d, did she not?

A. Yes, sir, the "Indra" went in on the 24th.

Q. And she stayed, did she not, until the 3d of February? A. On the 2d of February.

Q. The next vessel that took her place, that is, the one that succeeded her in discharging, was the "Salatio" on the 8th, was it not?

A. What ship was that?

Q. The "Salatio," a steamer.

A. We had that vessel.

Q. Was there any vessel between the 3d and the 8th? A. No, sir.

Q. Except some that took in coal to relieve the congested bunkers? A. That is all.

Q. Is it not a fact, Mr. Mills, that the imports of coal into San Francisco from Australia during the last half of 1907 and the first half of 1908 were unprecedented?

(Testimony of F. C. Mills.)

A. Yes, sir, I think there was a larger amount come in during that time, that is, as far as my memory serves me.

Q. It is a fact, is it not, that the different charterers here chartered every ship they could get hold of and rush coal in beyond your ability to handle it.

A. That I do not know about.

Q. There was a vast amount of coal that did arrive?
A. Yes, sir.

Q. That caused you, in relieving the congested state of the bunkers, to hire a number of the vessels as store ships?

A. Yes, sir, on account of the congested condition of the market here, we had to do so.

Q. You have some of that coal here yet that came in during that period—a large amount of it?

A. Yes, sir.

Q. Have you any estimate, or can you estimate the number of thousands of tons that were brought in from Australia between June, 1907 and 1908?

A. No, sir, I have never given it any thought.

Q. How much Australian coal have you on storage here now?

A. I really could not say. All I attend to is simply the discharging. When that is true, I pay no attention to it.

Q. You know the number of ships that you have used for storage, now?

A. I suppose we have possibly in the neighborhood of 24,000.

Q. 24,000 tons of coal?

(Testimony of F. C. Mills.)

A. Something of that sort.

Redirect Examination.

Mr. DENMAN.—Q. As I understand your testimony, between the discharging times of these various vessels, the docks were either congested or filled with vessels taking coal out for storage?

A. Yes, sir.

Q. That filled in the interim between the 15th of January and the 20th of March when the "Columbia" was discharged? A. Yes, sir.

Q. As a matter of fact, you would very often have to take coal out of a vessel that came in for discharge, put it in your bunkers, and take that coal out of the bunkers, put it into other vessels which held the coal for storage purposes?

A. Yes, sir.

Q. At other times when you were unable to procure such bottoms, the coal had to lay in the bunkers for two or three days at a time before it could be moved or shifted to get another vessel in. That is correct, is it not? A. Yes, sir.

Recross-examination.

Mr. HUTTON.—Q. When you were discharging a vessel, you usually discharged her at the head of the wharf?

A. Do you mean alongside of the bunkers?

Q. Yes. A. Yes.

Q. The wharf is quite long, and the vessel that would take the coal out is generally down at the other end. There is room at your wharf for two vessels?

(Testimony of James B. Smith.)

A. If they are small enough. They would have to be pretty small ships to put two in there. We put barges in there, and a small ship will also go in—a ship of about 2,000 tons.

Q. But that was your practice, was it not? You would unload a vessel at one end, and put a barge at the other end. As the coal came in and was weighed, you would take it down to the end of the bunker, and put it in on the barge? A. Yes, sir.

[**Testimony of James B. Smith, for the Defendant.**]

JAMES B. SMITH, called for the defendant, sworn.

Mr. DENMAN.—Q. What is your business, Mr. Smith?

A. General Manager of the Western Fuel Company.

Q. What is the Western Fuel Company engaged in doing? A. Buying and selling coal.

Q. How long have you been in the coal business yourself? A. Twenty-six years.

Q. In this port? A. Yes, sir.

Q. Are you familiar with the custom of the port with regard to the discharge of coal in the port?

A. Yes, sir.

Q. Supposing there are several vessels waiting for discharge at the docks at San Francisco. What is the order in which they would be discharged?

A. Usually at the date of arrival. They will take their turn.

Q. Is there any distinction as between steam and sail?

(Testimony of James B. Smith.)

A. Yes, sir. Steamer have the preference.

Q. What is the reason for that?

A. Well, the cost of maintenance of steamers is a large amount, and they have to keep their crews and force aboard at all times. Sailing vessels can usually get along with one or two men. The expense of maintaining a sailer is very small in comparison with a steamer.

Q. Is there any difference in the rate of discharge between sailers and steamers which also is a part of the foundation of the custom?

A. Yes, sir; the discharge of steamers usually runs from 500 to 1,000 tons a day, and a sailer 100 to 200 tons a day.

Q. Now, as I understand it, the custom of the port is that steamers are discharged before sailing vessels?

A. Always.

Q. And within their respective classes, vessels are discharged in the order of their arrival?

A. Yes, sir, usually.

Q. Is that the custom?

A. That is the custom; yes.

Q. Are you familiar with the custom of other ports?

A. Only at the loading ports of our mines in British Columbia. We load there aboard the vessels.

Mr. HUTTON.—I *do think* anything in British Columbia is material in this case, or the loading is material. We are dealing with the discharging.

(Testimony of James B. Smith.)

The COURT.—Let it go in, and get through with it. It is quicker that way.

Mr. DENMAN.—Q. What is the custom at these ports?

A. The same as at San Francisco. A sailer is pulled out, and the steamer put in ahead, and let her wait until the steamer is finished.

Q. Do you recollect the discharge of the steamship "Columbia" at your bunkers? A. Yes, sir.

Q. About when did she arrive in San Francisco?

A. Somewhere about January, I think. I cannot remember about dates. I have so many vessels.

Q. Did you have any discussion with her managing owner, Nelson, after her arrival regarding the vessel?

A. He came to the office to find out when the vessel would be discharged.

Q. And did he do that more than once?

A. He was at my office a dozen times, I suppose. I do not know about that particular vessel. I know he was in my office at least a dozen times.

Q. Was he there more than once in regard to the "Columbia"? A. Yes, sir, I think so.

Q. And what did he inquire?

A. When we would discharge the vessel.

Q. And what did you tell him, if you recollect?

A. That she would take her turn.

Q. Do you remember signing that contract (handing)? A. Yes, sir.

(Testimony of James B. Smith.)

Q. Do you recollect whether any vessel had discharged her cargo under that contract prior to the "Columbia"?

A. There have been quite a number, 30 or 40,000. There must have been quite a number of vessels.

Q. Was the "Columbia" the first vessel to discharge under that contract?

A. No, sir, she was not.

Q. Do you know what other vessels were discharged under it?

A. I will have to look up the list.

Q. That is in November, and the "Columbia" arrived in January.

A. This contract is in 1906—November 24th, 1906, she arrived in January, 1908. I think the "Columbia" was almost the last vessel under that contract.

Q. I was under a misapprehension as to that.

Cross-examination.

Mr. HUTTON.—Q. A steamer can always be discharged, can she not, well within her lay days. There is always abundant time in the charter to discharge her?

A. No, sir.

Q. A steamer coming from Australia has always plenty of time given in the charter?

A. Not necessarily.

Q. If she went alongside the dock the next day, you can always discharge her well within the time?

A. If we have facilities and accommodation for her cargo.

Q. I am leaving that out. Suppose she goes in alongside the dock, and the next day you discharge

(Testimony of J. J. Moore.)

her, you have time to spare, provided your bunkers are clear?

A. Provided our bunkers are clear, and her rate of discharge is not too burdensome.

Q. Supposing a sailing ship is lying in San Francisco with coal, and her lay days are up, and steamer comes in, do you mean to say you would discharge the steamer first? A. Certainly.

Q. And let the lay days run on. I think that is all.

[**Testimony of J. J. Moore, for the Defendant (Recalled).**]

J. J. MOORE, recalled.

Mr. DENMAN.—Q. Mr. Moore, when the “Columbia” arrived in port, did you have any conversation with Mr. Smith regarding discharging her?

A. Yes, sir.

Mr. HUTTON.—I submit that would be hearsay.

Mr. DENMAN.—I want to show diligence on our part; that he went to the Western Fuel Company and tried to get the vessel discharged.

The COURT.—Proceed.

Mr. DENMAN.—Q. Did you go there more than once?

A. I spoke to him several times. I could not say whether it was at his office or at my office. I spoke to him at the club once or twice.

Q. What response did you get?

A. He said he could not tell me.

Q. What was the reason assigned?

(Testimony of J. J. Moore.)

A. Too many ships ahead of us.

Q. Did you do all you could to get her discharged at that dock? A. Yes, sir.

Cross-examination.

Mr. HUTTON.—Q. Where is the bill of lading for this coal?

A. There are three bills of lading. The Custom-House gets one, the shipowner is supposed to get another, and we generally keep one in our office.

Q. Have you got one in your office?

A. I presume so.

Q. I asked you to produce that the other day.

Mr. DENMAN.—I admit the bill of lading is in the form you plead.

Mr. HUTTON.—I should like to have it produced.

Q. You received one from Davis & Fee, with their name on the back? A. An endorsement, yes.

Q. You think it is in your office yet?

A. I presume it is, I know there is one in the Custom-House.

[Statement by Mr. William Denman, Application to Amend Answer, etc.]

Mr. DENMAN.—That is the case.

If your Honor please, the pleadings in this case were drawn on the theory, and the libel alleges, that we failed to furnish a dock. The charter-party—admitted to be the charter-party—puts on us the duty of designation of a dock, and not of furnishing a dock. That ultimately appeared to be the breach that we committed—failure to designate a dock.

That threw us on to another line of defense not disclosed by the original libel, to wit, that the congestion here prevented the designation of any dock that could be immediately used. Our evidence has been put in on that theory. It is a nice question of law whether it is an affirmative defense, or an answer to the portion of the other side's case. I desire to amend my answer, which is to the effect that the congestion of the docks prevented our furnishing a dock for the discharge of the vessel. I have drafted a form of amendment which covers that which I will read:

“That San Francisco is and has been for more than two years prior to the facts alleged in the libel, the center of distribution of coal and other supplies to interior points in California, Arizona, Nevada, Idaho, Utah, and other western States. That a large quantity of such coal comes from Australia; that in the spring and summer of 1907 sufficient stocks were ordered to supply the normal demand for these places. That in the fall of 1907 a sudden depression in the manufacturing in the States east of the Rocky Mountains caused a great lessening of the demand for Colorado coals and other coals from the more eastern States of the United States, and *threw out* employment many railway cars engaged in the carrying of such coals to such eastern manufactures, whereby large quantities of coal were diverted from the normal eastern markets and thrown upon the market for coals ordinarily supplied from San Francisco as aforesaid; that for the said reason, the said Trans-Pacific coals remained in San Francisco in large

quantities, and had accumulated there before the arrival of the ship "Columbia," overcrowding the coal bunkers and other places for the storage of coals in San Francisco.

That before the arrival of said vessel, the respondent had sold all the coals thereon to the Western Fuel Company to be delivered to said company out of the vessel and on dock. That by reason of said congestion in the bunkers and coal storage places of said port, the said Western Fuel Company had been unable to empty its bunkers so as to discharge a large number of other vessels which, under the custom of said port and the said Western Fuel Company hereafter described, preceded said "Columbia" in right of discharge.

That it is and at all times was the custom of the coal trade at said port of San Francisco, and the inflexible rule of said Western Fuel Company, to discharge coal carrying vessels arriving for discharge at any dock in said port in the order of their arrival, steamers preceding sailing vessels. That the delay in discharging the "Columbia" was due to the occupancy of said Western Fuel bunkers by said coals and the discharge of said vessels having a priority over said "Columbia." That but one of the said vessels preceding the "Columbia" had been chartered to the respondent, and that said vessel the steamer "Craighall" had arrived at said port before the "Columbia"; that no vessel chartered by the respondent had discharged any coal at said Western Fuel Company bunkers for two months prior to the arrival of the said "Columbia."

That all the coal vessels chartered by respondent which discharged at said port prior to the discharge of the "Columbia" were chartered and on the way to said port before said depression, so causing the destruction of the interior coal market as aforesaid; and that all the coal on said vessels was sold to other parties before arrival, and respondent had no power of disposition of the same after its delivery to such persons in San Francisco; that the failure to remove such coal from the bunkers and storage places in San Francisco, and the crowding of such bunkers and storage places was hindrance to the discharge of the "Columbia" beyond the control of respondent, that by reason of said facts, respondent was unable to procure or furnish a dock for the discharge of the said steamship "Columbia" prior to the time at which she was actually discharged."

I move, if your Honor please, that the answer be amended to contain the facts set forth here, being the facts proved on the stand.

The COURT.—Let the amendment be made.

[Endorsed]: Filed November 12th, 1908. Jas. P. Brown, Clerk. By John Fougay, Deputy Clerk.

[Title of Court and Cause.]

Opinion.

H. W. HUTTON, Proctor for Libelants.

WILLIAM DENMAN, Proctor for Respondent.

DE HAVEN, District Judge.—This is an action brought by the owners of the ship "Columbia," to recover \$3,264.42, as demurrage for an alleged de-

lay of 42 days in unloading that vessel, under a charter-party entered into between the managing owner of the ship and the respondent corporation, on June 26, 1907. The "Columbia" carried, under this charter, a cargo of coal for respondent from Newcastle, Australia, to the port of San Francisco, arriving in the latter port on January 14, 1908, and on the next day her master gave notice to respondent, who was also the holder of the bill of lading of the vessel's arrival, and readiness to discharge, and her managing owner was informed, by the respondent, that the cargo carried by her had been sold to the Western Fuel Company, and that the ship "would dock at the bunkers of that company"; that the bunkers, of that company were crowded and that the vessel would probably be delayed three or four weeks before she could reach the place of discharge. The vessel, however, was not given a berth at the bunkers, referred to, until March 19, 1908.

The reason for this delay seems to have been that prior to that date the bunkers were continuously occupied by cargoes and vessels which had arrived in the port of San Francisco, prior to the "Columbia," and it was the general practice of the Western Fuel Company to discharge vessels in the order of their arrival in port; although it appears from the evidence that during the time the "Columbia" was delayed, one schooner, which arrived in port after her, was permitted to discharge 300 tons of cargo at these bunkers. But with this exception, the practice of the Western Fuel Company, in discharging vessels, was to discharge them in the order of their

arrival. The "Columbia," after reaching the berth assigned her, was discharged at the rate specified in the charter, and the delay of which she complains is that which occurred prior to reaching the berth at which she discharged her cargo.

1. The question for decision here is whether the libelants are, by the terms of the charter-party, entitled to recover demurrage for the delay in discharging the cargo of the "Columbia," under the circumstances above stated.

The charter-party first provides that the vessel shall load a full and complete cargo of coal at New Castle, and then proceeds:

" * * * and being so loaded shall therewith proceed to San Francisco harbor, California, to discharge at any safe wharf or place within the Golden Gate and deliver the full and complete cargo, in the usual and customary manner at any safe wharf or place or into crafts alongside as directed by consignee." * * *

"Frost or floods * * * or any other hindrance of what nature soever beyond the Charterers' of their Agents' control, throughout this Charter, always excepted." * * *

"To be discharged as customary, in such customary berth as consignees shall direct, ship being always afloat, and at the average rate of not less than 150 tons per weather working days (Sundays and holidays excepted), to commence when the ship is ready to discharge, and notice thereof has been given by the Captain in writing; if detained over and above

the said laying days, demurrage to be at 3d. per register ton per day.”

It will be seen that by the terms of the charter, the respondent, as consignee, had the option to direct the vessel to deliver her cargo at any safe wharf or place, within the Golden Gate, or in craft alongside; and I think the evidence shows that the respondent exercised this option on the 15th day of January, 1908, by informing the managing owner of the “Columbia” that the cargo of the vessel had been sold to the Western Fuel Company, and that she was to be docked at that company’s bunkers; although formal written notice directing the master to repair to a berth there provided for the ship was not given until March 16, 1908. The fact that the coal bunkers occupied three separate piers does not render the notice of the place of discharging insufficient, as the bunkers were under one management, and the master of the vessel must have understood that the ship was to be assigned to the first vacant berth, at one of the parallel piers, and no more specific designation was requested.

It is the settled rule that the lay days, named in the charter or the bill of lading within which the ship is entitled to deliver her cargo, do not commence to run until she has arrived at her destination, that is, until she has reached the place where she has contracted to deliver her cargo; and until her voyage has been thus completed, there is no obligation upon the part of the charterer or consignee to discharge her, and the vessel is not entitled to give notice of readiness to discharge.

In *Leonis Steamship Company, Limited vs. Rank. Limited*, 1 King Bench Division, 1908, 499, the rule for determining when a ship is an "arrived ship," that is, when it may be said the ship has completed the carrying voyage, is thus stated by Kennedy, L. J.:

"Now, the answer to the inquiry whether the ship can or cannot properly be described as an 'arrived' ship obviously depends upon the point which the parties have chosen to designate in the charter-party as the destination. The degree of precision is purely a matter of agreement between them. In practice, the destination is generally one of the following: (1) A Port; (2) a specified area within a port, such, e. g., as a basin, a dock, or a certain distance or reach of shore on the seacoast or in a river; or (3) the still more limited and precise point where the physical act of loading is to take place, as, e. g., a particular quay, pier, wharf or spout, or (where the operation is to be performed by means of lighters, and the ship is not to be in a shore berth) a particular mooring. In each of the last two cases—(2) and (3)—it is settled law that the point of destination is equally to be treated as designated in the charter-party, whether the point be named in the document by its local title or there is in the charter-party an express reservation to the charterer of the privilege to fix the point of destination by his order or direction."

Now, as already stated, the "Columbia" was, upon her arrival at San Francisco, seasonably directed, by respondent, to deliver her cargo at the bunkers of

the Western Fuel Company. This direction was given in the exercise of a right given by the charter-party, and under the rule stated in the case just cited, the place so designated is to be regarded as if specifically named in the charter-party, as the place of delivery; and this being so, it must be held, under the authorities, that the voyage of the "Columbia" did not terminate until she reached the berth to which she was directed, and she was not, within the meaning of the charter-party, ready to deliver her cargo, or entitled to give notice of her readiness to do so, until that time.

Tharsis Sulphur and Copper Co., Limited, vs.
Morel Brothers, and Company, etc., 2 Queen's
Bench Division, 647.

Murphy vs. Coffin, 12 Queen's Bench Division,
87.

In the first of the cases last cited, the question arises in an action to recover demurrage under a charter-party which obligated the ship to proceed to Mersey, or so near thereto as she might safely get, and deliver her cargo "at any safe berth as ordered on arrival in the dock at Garston."

The vessel was ordered to a particular berth which she was not able to reach for some time on account of its crowded condition, but it was held that the obligation of the charterer to unload did not commence until the vessel was in the berth ordered.

The case of *Murphy vs. Coffin*, 12 Q. B. D. 87, was an action for demurrage. The charter-party provided that the ship was to proceed to a named port and there deliver her cargo "along consignees' or

railway wharf or into lighters * * * as ordered." The vessel arrived at the port of destination and was ordered to discharge at the railway wharf, but as all of the discharging berths were crowded at that time, she was not berthed at the railway wharf until 24 hours after her arrival in the dock. It was held that the vessel was not entitled to recover for this delay. The decision of the Court was put upon the ground that the lay days named in the charter did not commence to run until the termination of the voyage, and that the voyage did not terminate until she was actually in the berth to which she had been directed.

Mathew, J., in delivering the opinion of the Court said:

"It is the ordinary and reasonable rule that the lay days under a charter-party do not begin to run until the vessel has arrived at her place of destination. The charter-party here seems to have been framed in the hope of avoiding the questions which have arisen in numerous cases as to the respective rights and liabilities of shipowners, charterers, and consignees with respect to the discharge of cargo where the place of destination is a dock. The vessel is to load, proceed to Dieppe, and deliver her cargo 'alongside consignees' or railway wharf, or into lighters, or any vessel or wharf where she may safely deliver, as ordered.' The place of destination is, therefore, such one of these places as the charterers may order. When the vessel arrived in the dock at Dieppe she was ordered to discharge at the railway wharf, which was then occupied by other

vessels, so that there was no berth vacant for her, and it was not until she obtained one that she was in a position to discharge her cargo. * * * I am of opinion that the railway wharf was the only place of destination under the charter-party; that the lay days did not begin to run until the vessel had secured a berth there."

In my opinion the rule announced in the foregoing cases is sound; and is therefore to be followed in the decision of this case.

2. But it is further urged, in behalf of the libellant, that, conceding that the charter-party gave to the respondent the option of naming the berth for the delivery of her cargo, that it was not authorized to name the wharf which the vessel could not reach without the long delay occurring in this case, in other words, the contention of the libellant is, in effect, that the charter-party should be construed as only giving the charterer the option to name a ready berth, but I am satisfied, notwithstanding what was said in *Williams vs. Theobold*, 15 Fed. 465, that the Court is not authorized to import such words into the contract.

As said by Bowen, L. J., in construing a similar provision in the charter-party, under consideration in *Tharsis Sulphur and Copper Co. vs. Morel Brothers & Co.*, 2 Q. B. D. 746:

"Then we were told that an option was given to the charterer, and that it was not properly exercised unless a berth was chosen that was empty. But I think there was a confusion in this argument also. The option is given for the benefit of the person who

has to exercise it. He is bound to exercise it in a reasonable time, but is not bound in exercising it to consider the benefit or otherwise of the other party. The option is to choose a port or berth or dock, that is, one that is reasonably fit for the purpose of delivery. * * * To limit the option of the charterer by saying that, in the choice of a berth, he is to consider the convenience of the shipowner, is to deprive him of the benefit of his option. The most that can be said is that the charterer does not exercise his option at all unless he chooses a berth that is free or is likely to be so in a reasonable time."

In the construction of charter-parties, or bills of lading, it is well to keep in mind what was said by Judge Brown in the case of *Fish vs. One Hundred and Fifty Tons of Brownstone*, 20 Fed. 201:

"It is in the power of the vessel always to provide against any loss on her part through detention from accidental causes at the place of discharge, if such be the intention of the parties, by inserting in the bill of lading the time within which the cargo must be received, or by other familiar provisions, such as that the vessel shall 'dispatch' or 'quick dispatch' either of which would cast the risk of delay upon the consignee."

This language is particularly applicable here. The charter-party was made in view of the fact that many vessels were, or might be engaged in the carriage of cargoes of coal to the port of San Francisco, and where many vessels are entering a port of discharge, the fact that there may be, at some time, a congestion in the facilities of discharge, be-

cause the wharves cannot accommodate all of the ships, ready to discharge at the same time, is not so remote a contingency that it ought not to be guarded against in the contract of carriage, if it is the intention of the parties that the charterer or consignee shall assume the risk of delay from such a cause. This can be done in the manner suggested in the above quotation, or by the insertion of other apt words, in the charter or bill of lading, such as that lay days shall commence when vessel 'is ready to unload and written notice given, whether in berth or not,' which were held sufficient for that purpose in *W. K. Nivee Coal Co. vs. Cheronea, S. S. Co.*, 142 Fed. 402.

The wharf to which the "Columbia" was ordered, by respondent, was not free, and the ship was delayed on that account for a period of forty-two days, but the Court cannot say that the action of the respondent was arbitrary or unreasonable, and therefore not within both the letter and spirit of the charter. The option given appears to have been exercised in good faith, for respondent's benefit, and this is all that the charter requires, in the matter of designating the place of discharge. The language of the Court in *Evans vs. Blair*, 114 Fed. 616, is applicable here.

After referring to the cases of *Murphy vs. Coffin*, 12 Q. B. D. 87; *Copper Co. vs. Morel* (1891), 2 Q. B. Div. 647, above cited, the Court said:

"The result of this class of cases, after some fluctuation, has been to leave the consignee a somewhat unlimited power in the matter of selecting the

berth, regardless of its crowded state, provided, only, it is a safe one. This, however, comes from the fact that the charter-party, or bill of lading, contained express language favorable to the consignee, and from the application of the well-known rule that where, in maritime contracts, parties have seen fit to choose fixed forms of expression, the great variety of contingencies incidental to maritime transactions disenable the Courts from establishing any safe theory by which the letter can be modified to meet any supposed intent."

It follows from these views that the libel must be dismissed, and it is so ordered.

[Endorsed]: Filed Aug. 31, 1909. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

[Title of Court and Cause.]

Final Decree.

This cause coming on duly to be heard, the libelants, being represented by H. W. Hutton, Esq., and the respondent by William Denman, Esq., and proof being offered by both parties, and said cause being argued, briefed and submitted:

It is hereby ordered, adjudged and decreed, that the libelants take nothing by their libel herein, that the said libel be dismissed, and that the respondent have judgment, for its costs to be taxed.

JOHN J. DE HAVEN,
Judge.

[Endorsed]: Filed Sep. 4, 1909. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

[Title of Court and Cause.]

Assignment of Errors.

The libellants and appellants in said cause specify the following as the errors committed by the District Court of the United States in and for the Northern District of California, in its decision and decree in said cause.

(1) The said Court erred in filing and deciding that the managing owner of the ship "Columbia" was notified by the respondent on the 15th day of January, 1908, or upon any day prior to March 16th, 1908, that the said ship would discharge her cargo at the bunkers of The Western Fuel Company in San Francisco or where she would discharge.

(2) The said vessel erred in filing and deciding that the master of the ship "Columbia" must have understood or did understand that that ship was to be assigned to the first vacant berth, at one of the parallel piers, of The Western Fuel Company, and that no more specific designation was requested.

(3) The said Court erred in finding and deciding that a vessel, and the ship "Columbia" was not entitled to give notice of her readiness to discharge until she arrived at the place designated by the respondent to discharge her cargo.

(4) The Court erred in finding and deciding that the *voyage* the ship "Columbia" in this case "did not terminate until she had reached the berth to which she was directed."

(5) The said Court erred in finding and deciding that the ship "Columbia" "was not within the mean-

ing of the charter-party ready to deliver her cargo" until she had arrived at a discharging place within the Port of San Francisco, designated by the consignee.

(6) The said Court erred in finding and deciding that the owners of the ship "Columbia" were not entitled to give notice of the readiness of that vessel to discharge her cargo until she had reached the berth where she was directed by the respondent to discharge.

(7) The said Court erred in finding and deciding that the respondent in this case was authorized to direct the ship "Columbia" to discharge at any but a ready berth.

(8) The Court erred in finding and deciding that the charter-party in this case was made in view of the fact that many vessels were or might be engaged in the carriage of cargoes of coal to the port of San Francisco.

(9) The said Court erred in finding and deciding that the delay of forty-two days in the unloading of the ship "Columbia" was neither arbitrary or unreasonable.

(10) The said Court erred in finding and deciding that the claimed option of the respondent as to the direction of where the ship "Columbia" should unload was exercised in good faith.

(11) The said Court erred in finding and deciding that it is the settled or at all the rule that the lay days named in the charter-party in this cause within which the ship "Columbia" was entitled to deliver her cargo did not commence to run until she had

reached the wharf of the Western Fuel Company where she was finally discharged.

(12) The said Court erred in finding and deciding that there was no obligation on the part of the respondent to discharge the ship "Columbia" in this case until she had reached the wharf or bunkers of the Western Fuel Company where she was finally discharged.

(13) The said Court erred in dismissing libellants' libel.

(14) The said Court erred in finding and deciding that the libellants herein were in any way affected by any rule of The Western Fuel Company in the discharge of vessels.

(15) The said Court erred in not awarding judgment for the libellants for the amount prayed for in their libels herein.

(16) The said Court erred in not finding and deciding that the ship "Columbia" and her owners and master had done all that they were required to do when they gave written notice of the readiness of that vessel to discharge in so far as she was able without the co-operation of the respondent. .

(17) The said Court erred in not finding and deciding that the delay of the ship "Columbia" in this case was unreasonable.

(18) The said Court erred in not finding and deciding that it was the duty of the respondent to discharge the ship "Columbia" without any sale of her cargo to the Western Fuel Company.

(19) The said Court erred in not finding and deciding that it was the duty of the respondent to

immediately, upon the receipt of the notice that the ship "Columbia" was ready to discharge, name a berth where she could at once discharge.

(20) The said Court erred in not finding and deciding that it was the duty of the respondent herein to at once discharge the ship "Columbia" when it received notice of her readiness to discharge.

(21) The said Court erred in not finding and deciding that it was the fault of the respondent herein that the ship "Columbia" was not discharged within the lay days named and mentioned in her charter-party herein.

(22) The said Court erred in not finding and deciding that the congestion of coal in San Francisco while the ship "Columbia" was waiting to be discharged was the fault of the respondent herein.

(23) The said Court erred in not finding and deciding that the unloading of the schooner "J. H. Lunsamm," and the steamer "Camphill" by the Western Fuel Company was not the proximate cause of the detention of the ship "Columbia" herein, and that the respondent herein was responsible for their being so unloaded, and for the detention of the said ship "Columbia."

(24) The said Court erred in not finding and deciding that the voyage of the ship "Columbia" herein ended, so far as she was concerned, when she had anchored in the port of San Francisco and the master thereof had given written notice to the respondent that the said vessel was ready to discharge her cargo.

(25) The said Court erred in not finding and deciding that the libellants were not in any way affected by the purported sale of the cargo of the ship "Columbia" to the Western Fuel Company.

(26) The said Court erred in not finding and deciding that it was the duty of the respondent herein to discharge the cargo of the ship "Columbia" herein, in lighters if it could not otherwise be discharged without detaining the said ship.

(27) The Court erred in making and rendering the opinion filed here on the — day of September, 1909.

(28) The said Court erred in not finding and deciding that the lay days of the ship "Columbia" commenced when the notice of her readiness to discharge was given on the 16th day of January, 1908, under the following language in the charter-party herein, to wit: "to commence when the ship is ready to discharge, and notice thereof has been given by the captain in writing."

(29) The said Court erred in not finding and deciding that the ship "Columbia" was not ready to discharge herein, on the 16th day of January, 1908.

In order that the foregoing assignments of error may be and appear of record, the libellants herein file and present the same to the Court, and pray that such disposition be made thereof as is in accordance with the law in such cases made provided, and said libellants pray a reversal of the above-mentioned decree heretofore made herein, and for judgment as

prayed for in their amended and supplemental libels herein.

Dated San Francisco, September 22d, 1909.

H. W. HUTTON,
Proctor for Libellants and Appellants.

Copy received this 22d day of September, 1909.

WILLIAM DENMAN,
Proctor for Respondent.

[Endorsed]: Filed Sept. 22d, 1909. Jas. P. Brown, Clerk. By M. Thomas Scott, Deputy Clerk.

[Title of Court and Cause.]

Notice of Appeal.

The respondent above named and its proctor will please take notice, that the libellants in said cause hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the decree given and made by the above-named district Court, on the 4th day of September, 1909, dismissing libellants' libel, and from each part of said decree and the whole thereof.

Dated September 13th, 1909.

H. W. HUTTON,
Proctor for Libellants and Appellants.

Copy received this 14th day of September, 1909.

WILLIAM DENMAN,
Per W. B. ACTON,
Proctor for Respondent.

[Endorsed]: Filed Sept. 14th, 1909. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

[Title of Court and Cause.]

**Stipulation [for Transmission of Original Exhibits
to United States Circuit Court of Appeals].**

It is hereby stipulated and agreed that the original exhibits in said cause shall be forwarded to the United States Circuit Court of Appeals for the Ninth Circuit, and the Clerk of the United States District Court need not make copies thereof.

Dated October 14th, 1909.

H. W. HUTTON,

Proctor for Libellant and Appellant.

WILLIAM DENMAN,

Proctor for Respondent and Appellee.

[Endorsed]: Filed Oct. 14, 1909. Jas. P. Brown,
Clerk. By M. Thomas Scott, Deputy Clerk.

**[Certificate of Clerk United States District Court
to the Apostles.]**

United States of America,
Northern District of California,—ss.

I, Jas. P. Brown, Clerk of the District Court of the United States of America, for the Northern District, do hereby certify that the foregoing and hereunto annexed one hundred and thirteen pages, numbered from 1 to 113, inclusive, with the accompanying exhibits, ten in number, contain a full and true transcript of the records in the said District Court, made up pursuant to subdivision 1 of Rule 4, of Admiralty, of the United States Circuit Court of

Appeals for the Ninth Circuit, and the instructions of H. W. Hutton, Esquire, Proctor for Libelants and Appellants, in the case of Andrew Anderson, Henry Nelson et al., vs. J. J. Moore and Company, a corporation, No. 13,767.

I further certify that the costs of preparing and certifying to the foregoing Transcript of Appeal is the sum of Fifty-five Dollars and Forty cents (\$55.40), and that the same has been paid to me by H. W. Hutton, Proctor for Libelants and Appellants.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 6th day of January, A. D. 1910, and of the Independence of the United States the one hundred and thirty-fourth.

[Seal]

JAS. P. BROWN,
Clerk.

[Endorsed]: No. 1808. United States Circuit Court of Appeals for the Ninth Circuit. Andrew Anderson, A. Anderson Company (a Corporation), John J. Beaton, Angus Beaton, Edward Carlsen, Harry F. Chase, Malcolm P. Chase, L. Chase, Samuel B. Chase, Mary L. Chase, Wm. B. Chase, Junior, Dorothy M. Chase, Fred J. Chase, George Boole (a Corporation), Mrs. E. G. Boole, Henrietta W. Hobbs, E. W. Hobbs, Clarence W. Hobbs, Edward Henrix, Margaret J. Wall, Marion B. Waldron, and Henry Nelson, Libelants. Appellants, vs. J. J. Moore & Company (a Corporation), Appellee. Apostles on Appeal. Upon Appeal from the United States Dis-

trict Court for the Northern District of California.

Filed January 6, 1910.

F. D. MONCKTON,
Clerk.

**[Certificate of Clerk United States District Court to
the Original Exhibits.]**

United States of America,
Northern District of California,—ss.

I, Jas. P. Brown, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify, that the annexed documents, ten in number, are the Original Exhibits, introduced and filed at the hearing of the case of Andrew Anderson, Henry Nelson et al. vs. J. J. Moore and Company, a corporation, No. 13,767, and are herewith transmitted to the Circuit Court of Appeals, of the United States, for the Ninth Circuit, as per stipulation, filed in this office and embodied in the Apostles on Appeal, transmitted herewith, and which said Exhibits are known as and marked:

Libelant's Exhibit No. "A," "B," "C," "D," "E,"
"F," "G" (various letters).

Libelant's Exhibit No. H (Coal Contract).

Defendant's Exhibit No. 1 (Letter).

Defendant's Exhibit No. 2 (List of "Columbia" lay
days).

In witness whereof, I have hereunto set my hand and affixed the Seal of said District Court, this 6th day of January, A. D. 1910.

[Seal]

JAS. P. BROWN,
Clerk.

[**Libelants' Exhibit "A."**]

Received

Jan. 15, 1908.

Ans.————— 12 M.

J. J. Moore & Co.

W. M.

San Francisco, Cal., Jan. 15, '08.

Messrs. J. J. Moore & Co.,
215 Pine Street,
City.

Gentlemen: Please be advised that the ship "Columbia," consigned to your good selves, has arrived at this port, and entry effected at Custom House.

Vessel is awaiting your orders, and lay days will commence as per charter party.

Respectfully yours,

HENRY NELSON,

Managing Owner.

[Endorsed]: No. 13,767. Anderson vs. J. J. Moore & Co. Libelants' Exhibit "A." Jas P. Brown, Clerk. By Francis Krull, Deputy Clerk:

No. 1808. U. S. Circuit Court of Appeals for the Ninth Circuit. Libelants' Exhibit "A." Received Jan. 6, 1910. F. D. Monekton, Clerk.

[Libelants' Exhibit "B."]

San Francisco, Jan. 18, 1908.

Messrs. J. J. Moore & Co.,
215 Pine St., City.

Gentlemen: You will please take notice that as per notice served upon you January 15, 1908, the Ship "Columbia" has arrived at San Francisco and has been ready to discharge on and since said 15th day of January.

Please procure and advise me of place of discharge. Demurrage will be charged as per charter party.

Respectfully yours,

HENRY NELSON,

Managing Owner Ship "Columbia."

[Endorsed]: No. 13,767. Anderson vs. J. J. Moore & Co. Libelants' Exhibit "B." Jas P. Brown, Clerk. By Francis Krull, Deputy Clerk.

No. 1808. U. S. Circuit Court of Appeals for the Ninth Circuit. Libelants' Exhibit "B." Received Jan. 6, 1910. F. D. Monckton, Clerk.

[Libelants' Exhibit "C."]

[Letterhead of J. J. Moore & Co.]

San Francisco, Cal., March 16th, 1908.

Henry Nelson, Esq.,

Managing Owner Ship "Columbia,"

San Francisco, Cal.

Dear Sir: Will you please have the "Columbia" docked at the bulkhead berth alongside the Folsom St. bunkers of the Western Fuel Co. on the tide which

serves about 11 o'clock tomorrow morning, and have everything in readiness to commence discharge as soon as the vessel is docked.

Yours faithfully,

J. J. MOORE & CO.,

Wm. Mainland,

Secretary.

[Endorsed]: No. 13,767. Anderson vs. J. J. Moore & Co. Libelants' Exhibit "C." Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

No. 1808. U. S. Circuit Court of Appeals for the Ninth Circuit. Libelants' Exhibit "C." Received Jan. 6, 1910. F. D. Monckton, Clerk.

[**Libelants' Exhibit "D."**]

[Letter-head of J. J. Moore & Co.]

San Francisco, Cal., Feb. 3rd, 1908.

Die. J. J. M.

H. W. Hutton, Esq.,

Atty-at-Law,

527 Pacific Bldg., City.

Dear Sir: We beg to acknowledge receipt of your favor of the 1st inst. addressed to the subscriber, and in reply thereto will say that you have been misinformed regarding the laydays of the Ship "Columbia." They are not as yet up, nor will they be for some days to come. When the vessel is discharged her demurrage will be treated in the usual and customary way.

We are, Dear Sir,

Yours faithfully,

J. J. MOORE & CO.,

J. J. MOORE,

President.

[Endorsed]: No. 13,767. Anderson et al. vs. J. J. Moore & Co. Libelants' Exhibit "D." Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

No. 1808. U. S. Circuit Court of Appeals for the Ninth Circuit. Libelants' Exhibit "D." Received Jan. 6, 1910. F. D. Monckton, Clerk.

[**Libelants' Exhibit "E."**]

[Letter-head of H. W. Hutton.]

Received

Feb. 3, 1908.

Ans. Yes.

J. J. Moore & Co.

San Francisco, February 1st, 1908.

J. J. Moore, Esq.

My Dear Sir: Captain Nelson the managing owner of the "Columbia" has requested me to write you about demurrage on that vessel, it appears she arrived January 15th was ready to discharge that day, and no cargo has been taken out of her *ywt*,

She would have been fully discharged today, or Monday next if the *charty* party had been lived up to, assuming this to be a non-working day.

He has instructed me to make a demand on you for demurrage, kindly advise me whether demurrage will be paid by you without legal proceedings and oblige.

Yours Very Truly,

H. W. HUTTON.

[Endorsed]: No. 13,767. Anderson et al. vs. J. J. Moore & Co. Libelants' Exhibit "E." Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

No. 1808. U. S. Circuit Court of Appeals for the Ninth Circuit. Libelants' Exhibit "E." Received Jan. 6, 1910. F. D. Monckton, Clerk.

[**Libelants' Exhibit "F."**]

[Letter-head of H. W. Hutton.]

Ans.

San Francisco, February 8th, 1908.

J. J. Moore & Co.

Gentlemen: Mr. Nelson, the managing owner of the "Columbia" has requested me to again write you about that vessel, he says the lay days were up yesterday the 7th at 12 noon,

He wishes to charter the vessel, and if he does not get her soon his chances will probably be gone, as he is unable to fix a date when he can deliver her for loading.

He also wishes payment of demurrage now due, kindly advise me what you will do about it and oblige.

Yours Very Truly,

H. W. HUTTON.

Received

Feb. 10, 1908.

Ans.—————

J. J. Moore & Co.

[Endorsed]: No. 13,767. Anderson et al. vs. J. J. Moore & Co. Libelants' Exhibit "F." Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

No. 1808. U. S. Circuit Court of Appeals for the Ninth Circuit. Libelants' Exhibit "F." Received Jan. 6, 1910. F. D. Monckton, Clerk.

[**Libelants' Exhibit "G."**]

[Letter-head of J. J. Moore & Co.]

(Dic. J. J. M.)

San Francisco, Cal., Feb. 10th, 1908.

H. W. Hutton, Esq.,

Pacific Bldg.,

City.

Dear Sir: We beg to acknowledge receipt of your favor of the 8th inst. re Bark "Columbia," and in reply thereto will say that it is in error to state the laydays of this vessel were up on the 7th. Under the most favorable circumstances, in consideration of the Charter Party, they will not expire before the night of Thursday, the 13th inst., and we further beg to advise you that the matter will be handled as customary, when the time arrives.

We note that unless the vessel was turned over to the owners soon the chances of fixing her would be gone. The last time we saw Captain Nelson he informed us the vessel was fixed to go to Alaska next March-April, consequently that she would not be needed until then. However, be this as it may, the vessel will be discharged in her turn, as customary.

We are, Dear Sir,

Yours faithfully,

J. J. MOORE & CO.

J. J. MOORE,

President.

[Endorsed]: No. 13,767. Anderson et al. vs. J. J. Moore & Co. Libelants' Exhibit "G." Jos. P. Brown, Clerk. By Francis Krull, D. C.

No. 1808. U. S. Circuit Court of Appeals for the Ninth Circuit. Libelants' Exhibit "G." Received Jan. 6, 1910. F. D. Monckton, Clerk.

[Libelants' Exhibit "H."]

COAL CONTRACT.

San Francisco, Nov. 24, 1906.

Kind of Coal—**DOUBLE SCREENED STANFORD MERTHYR COAL.**

Name of Vessels—**TO BE NAMED FROM TIME TO TIME.**

Shipment—**TO BE SHIPPED DURING 1906 AND 1907 AT A RATE OF ABOUT ONE STEAMER LOAD PER MONTH.**

Quantity—**THIRTY TO FORTY THOUSAND (30/40,000) TONS.**

Price—**SEVEN DOLLARS** per ton of 2240 lbs., landed on wharf here, duty paid.

Payable, cash in U. S. gold coin on delivery according to U. S. Custom House weights.

Buyer to designate the discharging berth, where vessel can lie in safety, and agrees to receive Coal at an average rate of not less than 500 tons per working day.

Lay days to commence in 12 hours steamers 3 days sailers after notice that vessel has entered at Custom House, unless vessel is docked sooner.

Vessel to pay $6\frac{1}{4}$ cents per ton, the customary half weighing charge.

Purchaser to have option free of expense of moving vessel once during discharge.

State Harbor tolls payable by purchaser.

Any alteration in present rate of duty to be for or against the purchaser.

Seller not responsible for shipment of Coal, should this be impracticable through strikes, lockouts or accidents at the Collieries.

Should the vessel named be lost, this contract to be void, in proportion to amount of cargo aboard.

Buyer is entitled to the following reductions:

~~—Six cents per ton if the cargo is discharged at the rate of 150 tons per working lay day.~~

~~—Twelve cents per ton if the cargo is discharged at the rate of 200 tons per working lay day.~~

Nine cents per ton if the vessel is free from dockage, or if the dockage expenses are paid by buyer, while the vessel is engaged in unloading all or any portion of this cargo.

REMARKS:

BUYERS TO HAVE ALL THE PRIVILEGES OF THE CHARTER-PARTY.

SELLER: J. J. MOORE & CO.

J. J. MOORE,

President.

BUYER: WESTERN FUEL CO.

JAMES B. SMITH,

Vice-President.

* * * * *

[Endorsed]: Western Fuel Co. Nov. 24/06. 1906-1907 Coal Contract. C. 48. No. 13,767. Anderson vs. J. J. Moore & Co. Libelants' Exhibit No. "H." Jas. P. Brown, Clerk. By Francis Krull.

No. 1808. U. S. Circuit Court of Appeals for the Ninth Circuit. Libelants' Exhibit "H." Received Jan. 6, 1910. F. D. Monckton, Clerk.

[Defendant's Exhibit No. 1.]

[Letter-head of J. J. Moore & Co.]

San Francisco, Cal., Oct. 15, 1908.

Mr. Wm. Denman,

San Francisco, Cal.

Anderson vs. J. J. Moore.

"COLUMBIA"

Dear Sir: In an answer to yours of even date,—

(a) The following are the colliers J. J. M. & Co. had in the port of San Francisco for two months prior to Jan. 15, 1908.—

S. S. "Craighall"—Arrived Nov. 9/07. Commenced discharge at Oakland Long Wharf Nov. 12/07. Finished discharge Nov. 23, 1907. Cargo sold to Western Fuel Co.

S. S. "Jethou"—Arrived Nov. 15/07. Commenced discharge at Beale St. Nov. 21/07, and finished Nov. 30/07. Cargo was sold to the Pacific Coast Co.

S. S. "Riverdale"—Arrived Decr. 30/07. Commenced discharge at Beale St. Decr. 27/07, and finished Jan. 3/08. Cargo was sold to the Pacific Coast Co.

S. S. "Camphill"—Arrived Jan. 10/08. Commenced discharge at Mission St. Feb. 6/08, and finished Feb. 13/08. Cargo went to Western Fuel Co.

(b) The following are the weather working days Jan. 15/08 to Feb. 15/08,—January 15, 16, 17, 21, 22, 27, 28, 30, 31, February 3, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15.

Yours faithfully,

J. J. MOORE & CO.

W. M.

[Endorsed]: No. 13767. Anderson vs. J. J. Moore & Co. Defendant's Exhibit No. 1. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

No. 1808. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendant's Exhibit "1." Received Jan. 6, 1910. F. D. Monckton, Clerk.

[Defendant's Exhibit No. 2.]

[Letter-head of Western Fuel Company.]

(1)

San Francisco, 1908.

"COLUMBIA" Laydays.

2220 Tons @ 150 tons daily—15 days for discharging.

January	14.	Arrived late	
"	15.	Lying in Stream—Received notice at noon, ship entered at Custom House.	
"	16.	"	
"	17.	"	Raining
"	18.	"	"
"	19.	"	Sunday
"	20.	"	Raining

“	21.	“	“
“	22.	“	
“	23.	“	Raining
“	24.	“	“
“	25.	“	“
“	26.	“	Sunday
“	27.	“	
“	28.	“	
“	29.	“	Raining
“	30.	“	
“	31.	“	

(2)

February	1.	Lying in Stream—	Raining.
“	2.	“	Sunday
“	3.	“	
“	4.	“	Raining.
“	5.	“	
“	6.	“	
“	7.	“	
“	8.	“	
“	9.	“	Sunday
“	10.	“	
“	11.	“	
“	12.	“	
“	13.	“	
“	14.	“	
“	15.	“	
“	16.	“	Sunday
“	17.	“	
“	18.	“	
“	19.	“	
“	20.	“	

(3)

February	21.	Lying in Stream	
"	22.	"	
"	23.	"	Sunday
"	24.	"	
"	25.	"	
"	26.	"	
"	27.	"	
"	28.	"	
"	29.	"	
March	1.	"	Sunday
"	2.	"	
"	3.	"	
"	4.	"	
"	5.	"	
"	6.	"	
"	7.	"	
"	8.	"	Sunday
"	9.	"	
"	10.	"	
"	11.	"	
"	12.	"	

(4)

March	13.	Lying in Stream	
"	14.	"	
"	15.	"	Sunday
"	16.	"	
"	17.	"	
"	18.	Docked at Folsom St. Bunkers and commenced discharging.	
"	19.	"	
"	20.	Finished discharging at 1 P. M.	

[Endorsed]: No. 13,767. Anderson vs. J. J. Moore & Co. Defendant's Exhibit No. 2. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

No. 1808. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendant's Exhibit "2." Received Jan. 6, 1910. F. D. Monckton, Clerk.

